

1 gentlemen of the jury just a brief summary of how  
2 Pepsi was trained?

3 A. Yes. They take them as a puppy, and the way  
4 they start to train these dogs is they -- first  
5 off, they look for a dog that has a very strong  
6 drive to play with toys and to hunt and search for  
7 things. And when they find that type of dog, they  
8 will take a piece of PVC pipe and they drill holes  
9 in the PVC pipe and they'll take the different  
10 narcotics and put them inside that pipe and then  
11 cap off the ends of these pipes.

12 And then they hide the pipe. And they have  
13 the dog search until she finds this PVC pipe. And  
14 so every time she starts to find this pipe she  
15 starts to associate the odor of those narcotics  
16 with the pipe, which is also her toy. When we play  
17 with the toy now, it's still a piece of PVC pipe,  
18 aluminum pipe, copper pipe, stuff of that nature.  
19 Stuff that you can hide drugs inside and hide it  
20 for them and them find, but not be able to get to  
21 the actual drugs.

22 But when they'll training them they'll put  
23 all four of the different types of drugs down in  
24 these pipes, and they'll throw it out in some tall  
25 grass. And have the dog go search for it until she

A

1 finds it. They hide them in cars and buildings.  
2 And anywhere you can put narcotics they'll hide  
3 these toys that are stuffed with the narcotics, and  
4 then every time the dog finds these toys they start  
5 to associate over time the odor of the narcotics  
6 with their toy.

7 So after she's trained, now, when we're  
8 searching a car or a house, she is actually looking  
9 for her toy and not looking for drugs. But when  
10 she smells the drugs she knows that that's the odor  
11 that goes along with her toy, and that's when  
12 she'll indicate.

13 Q. Okay. So this is a game to her?

14 A. Yes.

15 Q. Okay. And this is kind of a hide and seek  
16 thing, she gets to play?

17 A. Right.

18 Q. She gets to play if in fact something is  
19 found?

20 A. Right. Any time we find something, then  
21 she's rewarded with a toy. And we spend ten  
22 minutes off to the side in the grass, or wherever  
23 we're at, playing with the toy while all the other  
24 deputies get to go and actually work.

25 Q. Okay. Okay.

1           On the 24th of March, 2008 did you have  
2       Pepsi with you when you were present at the patrol  
3       stop of Durrell Bester?

4       A.     Yes, sir.

5       Q.     All right. And at that time, was -- did  
6       Pepsi stay in the car with you or did she get out?

7       A.     She was in the car initially.

8       Q.     Okay.

9       A.     And Deputy Daniels had asked for consent to  
10      search the vehicle, I was present when he asked.  
11      And the driver of the vehicle declined to give us  
12      consent.

13            So at that point, I got Pepsi out of the  
14      car.

15      Q.     Okay. And what was the purpose in getting  
16      Pepsi out of the car at that point?

17      A.     To run a free air sniff of the vehicle to see  
18      if there was an odor of any narcotics present.

19      Q.     Okay. A "free air sniff", I'm sure that  
20      sounds -- that is exactly what it sounds like.  
21      But what is a "free air sniff"?

22      A.     A free air sniff is where the courts have  
23      ruled that any air coming out of the cracks,  
24      crevices or seams of a vehicle, out of opened  
25      windows and stuff like that, is free to be searched

1 with a K-9. Because it doesn't belong to the car,  
2 as long as it's coming out of the vehicle on it's  
3 on.

4 Q. Okay. Now, when y'all are either playing --  
5 excuse me. When you are either playing with Pepsi  
6 or when she's working, does she have any kind of  
7 -- does she indicate in any manner, if she has in  
8 fact found something that smells like one of her  
9 toys?

10 A. Yes, sir. She's trained to indicate  
11 passively.

12 Q. Okay. When you say "passively", what do you  
13 mean?

14 A. When she smells the odor of narcotics, she  
15 will either sit down, stare at, or lay down and  
16 stare at the location where she smells the odor  
17 coming from.

18 Q. Okay. And you say she's trained to indicate  
19 passively?

20 A. Yes, sir.

21 Q. Are there other ways of doing this?

22 A. Yes. They also train dogs to indicate  
23 aggressively. And an aggressive indication is  
24 where the dog will start to paw or scratch at the  
25 location, or bite at the location where they smell

1 the odor.

2 Q. Okay. But Pepsi is trained to indicate  
3 passively?

4 A. Yes, sir.

5 Q. All right. You said you conducted this free  
6 air sniff?

7 A. Yes, sir --

8 Q. With Pepsi?

9 A. Yes, sir.

10 Q. All right. Tell us how you -- where you  
11 conducted this sniff.

12 A. Well, we were in the parking lot of a  
13 restaurant and --

14 Q. Is that where the truck had been pulled  
15 over?

16 A. Yes, sir.

17 Q. Okay.

18 A. They stopped behind an Arby's restaurant.

19 Q. Okay.

20 A. We're in this parking lot, and initially I'll  
21 take her out of the car and have her lay down in  
22 front of the vehicle. And then I'll walk around  
23 and show her the area that I want her to check.  
24 And then we will go around the outside of the  
25 vehicle checking the different seams and crevices.

1 The seams where the doors open, the seams -- the  
2 cracks around the hood, the tires, gas tanks.

3 And if the windows are open, I'll have her  
4 stick her head in the open window or smell right  
5 there at the open window. The beds of the pickup  
6 truck, have her, come up on the side of the pickup  
7 truck and she can stick her nose over and smell  
8 along the edges of it.

9 Q. All right. Now, Deputy, when you've got  
10 Pepsi, and you show her the areas you want her to  
11 sniff, do you tell her where to indicate, do you  
12 provide any kind of signal to her, I want you to  
13 hit right here, or anything that you've trained  
14 her to do that way?

15 A. No, sir.

16 Q. All right. What is her purpose out on the  
17 scene?

18 A. Her purpose is to let us know if there is  
19 anything -- any type of illegal narcotics in that  
20 vehicle.

21 And what I will do with her, during those  
22 searches, she will follow my hand, as far as I show  
23 her like up on the hood, and then I'll move my hand  
24 down to the bottom so she can check the door, and  
25 just up and down.

1 But when she indicates, she sits and  
2 indicates on her own. It's not due to hand  
3 movement or anything like that.

4 Q. Okay. And did you in fact ask -- or did you  
5 instruct Pepsi to sniff this vehicle?

6 A. Yes, sir.

7 Q. All right. And did she in fact passively  
8 indicate anywhere?

9 A. Yes, sir. On the rear bed, cargo area of the  
10 pickup truck.

11 Q. All right. Did she indicate anywhere else?  
12 That you recall?

13 A. Not that I recall.

14 Q. All right. And in the rear-bed, cargo area,  
15 did she indicate on any -- anything in particular?

16 A. Yes. Once she had indicated on the outer  
17 edge of the vehicle. I put her up into the  
18 vehicle, into the bed area, and she indicated on a  
19 suit case that was in the back of that vehicle.

20 Q. Okay. And was that -- Based on her  
21 indication, to your knowledge, was this suit case  
22 searched?

23 A. Yes, sir.

24 Q. All right. And what was found inside of it?

25 A. Let me refer to my report on this.

1 (Witness reviewing documents.)

2 A. I searched the bag -- (reviewing documents).

3 Q. "In the black bag in the bed of the truck I  
4 found pieces of torn off Brillo pad, syringes, an  
5 ash tray, a pill splitter and a push rod that was  
6 burnt on the end for a crack pipe."

7 All right.

8 You said you found these items in a black  
9 bag, black suit case of some kind?

10 A. Yes, sir.

11 Q. Okay. Were they contained in anything? Do  
12 you remember?

13 A. Yes, sir. They were found in a black plastic  
14 box.

15 Q. All right.

16 A. That was inside of the suitcase.

17 (Whereupon, the Prosecutor is  
18 showing defense counsel  
19 documents.)

20 THE COURT: All right, Mike, hold on a  
21 second there.

22 MR. ANDERTON: Okay.

23 THE COURT: Ladies and gentlemen, would  
24 you go into the jury room. Y'all are going  
25 to have about ten minutes. Okay.



1 (Whereupon, a break was had.)

2 (Whereupon, the Prosecutor and  
3 defense counsel open State's  
4 Exhibit Numbers 11 through 14  
5 outside of the jury's presence.)

6 (Whereupon, the jury returns to  
7 the courtroom where the following  
8 is heard in open court with the  
9 Defendant and all counsel  
10 present.)

11 THE COURT: All right. Go ahead.

12 Q. Deputy Eaton, I'm going to show you what's  
13 been marked State's Exhibit No. 11. And ask you  
14 to look at the package and see if you recognize  
15 that package, please.

16 A. Yes, sir.

17 Q. What is this on the package, please?

18 A. This is where I secured the black box that I  
19 found in the suitcase that had drug paraphernalia  
20 inside of it.

21 Q. And who placed the black box in that  
22 particular package?

23 A. I did.

24 Q. And did you mark that package with anything,  
25 how can you tell that that's the same package?

1 A. Yes, sir. My name, my hand handwriting's on  
2 it, and case number that goes along with this case  
3 is on here.

4 Q. All right. Prior to placing -- Well, take a  
5 look at the contents of State's Exhibit 11,  
6 please.

7 (Witness complies.)

8 Q. All right. Do you recognize the contents of  
9 the black box that's in the envelope marked  
10 State's Exhibit 11?

11 A. Yes, sir.

12 Q. All right. And what is -- what are the  
13 contents, please?

14 A. You have an ash try, a pill splitter, three  
15 syringes, small pieces of torn off Brillo pad, a  
16 burnt push road, typical of use in a crack pipe.  
17 There's some change, a lighter and a cell phone  
18 also in here.

19 Q. All right. And you've been working for the  
20 sheriff's office for 14 years; is that right?

21 A. Yes, sir.

22 Q. Have you had occasion to see those items in  
23 the presences of -- or have you had a chance to  
24 see those items in other situations?

25 A. Yes, sir.

1 Q. All right. Are those items, or those items  
2 in combination with each other, commonly used for  
3 the injection of drugs?

4 A. Yes, sir.

5 Q. All right. Once you've found these  
6 particular items, what did you do with them,  
7 please?

8 A. I secured them into my vehicle.

9 Q. All right. And then what?

10 A. And then, kept them with me until going back  
11 to the office to put them in the envelope, and at  
12 that point I put them over in the property room  
13 over at our headquarters building.

14 Q. All right. The contents of the black box,  
15 and the black box, were those items in your care,  
16 custody and control the entire time, from the time  
17 you retrieved them from a piece of luggage, to the  
18 time that you placed them into the envelope or  
19 State's Exhibit 11?

20 A. Yes, sir.

21 Q. All right. And did you make any additions  
22 or deletions to the black box or its contents,  
23 once you collected it, and until the time you  
24 placed it into the envelope marked State's Exhibit  
25 11?

1 A. No, sir.

2 Q. All right. Is it in the same --  
3 substantially the same condition today as it was  
4 when you first collected it?

5 A. Yes, sir.

6 Q. Now, once you placed that into the envelope,  
7 what did you do with the envelope that had that in  
8 it?

9 A. I secured it in my evidence locker over  
10 night.

11 Q. Okay.

12 A. And then took it and placed it in our  
13 property room.

14 Q. All right. You sealed that envelope up; is  
15 that right?

16 A. Yes, sir.

17 Q. How did you seal it up, please?

18 A. We used red evidence tape. And we seal all  
19 the seams of the envelope. Make sure all the seams  
20 are completely covered. And then I write my  
21 initials over the tape, going over the part of the  
22 envelope and the tape. That way if the tape is  
23 removed then my initials will be torn and they'll  
24 know it's been opened.

25 Q. All right. Prior to coming to court today,

1 was that item in a sealed condition?

2 A. Yes, sir.

3 Q. All right. And during the break for  
4 purposes of all of us to see, were those items --  
5 was that item opened?

6 A. Yes, sir.

7 Q. In the presence of defense counsel,  
8 Defendant, yourself and the court reporter; is  
9 that right?

10 A. Yes, sir.

11 Q. All right. Now, but when you brought it  
12 from the property room to court today, was it in a  
13 sealed condition?

14 A. Yes, sir.

15 Q. All right. And was it in your care, custody  
16 and control the entire time from the time you  
17 brought it from the property room over here to  
18 court?

19 A. Yes, sir.

20 Q. Make any additions or deletions to it?

21 A. No, sir.

22 Q. In the same, or substantially the same,  
23 condition now as it was when you first collected  
24 back from the property room?

25 A. Yes, sir.

1 Q. All right. With the exception of the fact  
2 that it had been opened and it now how as exhibit  
3 sticker on it?

4 A. Yes, sir.

5 Q. All right.

6 MR. ANDERTON: The State would move to  
7 introduce State's Exhibit 11 -- Excuse me  
8 12, I'm sorry.

9 Is it 11?

10 THE WITNESS: 11.

11 MR. ANDERTON: I'm sorry, Judge.

12 THE COURT: 11 is in.

13 MR. BENSON: No objection, Your Honor.

14 (Whereupon, State's Exhibit Number  
15 11 was received into evidence.)

16 Q. Once that item, the black box and the drug  
17 paraphernalia was found, you said that was found  
18 in a piece of luggage in the back of the truck?

19 A. Yes, sir.

20 Q. All right. Do you know whose luggage that  
21 was?

22 A. Yes, sir. It was luggage that was seen by  
23 deputies at the house --

24 MR. BENSON: Objection, Your Honor.

25 The officer is testifying about what was

1           seen by another officer.

2           THE COURT: Sustained.

3   Q.       Based on your investigation, have you come  
4   to find out whose luggage that was?

5   A.       Yes, sir.

6           I looked at the luggage, there were male and  
7   female clothes in it. I asked the Defendant about  
8   the female clothes in there, and he said they  
9   belonged to his girlfriend.

10   Q.       All right. What about the male clothes --

11           THE COURT: Excuse me, hold on one  
12   second.

13                       (Off the record.)

14           THE COURT: Go ahead.

15   Q.       All right. Do you see any tags on that  
16   language?

17   A.       Not that I recall.

18   Q.       Okay. Did you determine who owned that  
19   particular luggage?

20   A.       Yes, sir.

21   Q.       Who?

22   A.       The Defendant. I asked him about the  
23   clothing and stuff that was in there, because there  
24   was male and female clothing, and he said he had  
25   left in a hurry, and just grabbed whatever he could

1 and threw it in the bag.

2 Q. Okay. At that time, was Mr. Bester  
3 arrested?

4 A. Yes, sir.

5 Q. All right. What was he arrested for?

6 A. He was placed under arrest for unlawful  
7 possession of drug paraphernalia at that time.

8 Q. All right.

9 You indicated, earlier, that once he was  
10 taken out of the truck, he was placed into the  
11 back of Deputy Daniels' car; is that right?

12 A. Yes, sir.

13 Q. All right. And did you to accompany Deputy  
14 Daniels in taking Mr. Bester anywhere?

15 A. No, sir.

16 Q. Did you take Mr. Bester anywhere?

17 A. No, sir.

18 Q. Okay. All right. How long were y'all out  
19 on the scene where the truck was stopped?

20 A. I would say approximately 45 minutes.

21 Q. Okay. How much luggage was in the back of  
22 that truck?

23 A. There were numerous bags in the back-end.

24 Q. Okay. Bags, how about the luggage? Was  
25 there a lot of luggage back there?



1 A. Yes, sir. There were numerous, different  
2 pieces of luggage in the back of the car.

3 Q. All right. Were did you -- how long were  
4 out there on the scene?

5 A. I would say 45 minutes.

6 Q. Okay. Once you left there, where did you  
7 go?

8 A. When I left there, I headed back to the  
9 Center Point area, to the original residence, where  
10 we were first conducting surveillance, to do the  
11 search warrant.

12 Q. Okay. Did you at any point go over to  
13 location of Mr. Bester's momma's house?

14 A. No, sir, I did not.

15 Q. Okay. Did you in fact execute the search  
16 warrant over at --

17 THE COURT: Wait. Are you saying house  
18 and apartment interchangeably --

19 MR. ANDERTON: Yes, Judge, and I  
20 apologize.

21 THE COURT: Don't confuse them.

22 MR. ANDERTON: Yes, sir. I'm sorry,  
23 Judge.

24 Q. You had a search warrant for Mr. Bester's  
25 residence?

1 A. Yes, sir.

2 Q. Is that correct?

3 A. Yes, sir.

4 Q. What type residence was Mr. Bester's  
5 residence?

6 A. It was a house.

7 Q. Okay. His was a house?

8 A. Yes, sir.

9 Q. All right. And apparently Mr. Bester went  
10 into his mother's residence as well?

11 A. Yes, sir.

12 Q. At some point during that day, right?

13 A. Yes, sir.

14 Q. Okay. And that's an apartment; is that  
15 correct?

16 A. Yes, sir.

17 Q. Okay. All right.

18 Did you in fact serve the search warrant on  
19 Mr. Bester's residence, to the house?

20 A. Yes, sir.

21 Q. All right. And during the course of that  
22 search warrant, what if anything was found?

23 A. There were --

24 THE COURT: Is there an address? Is  
25 that the --

1 MR. ANDERTON: Yes, sir.

2 (Witness reviewing documents.)

3 THE WITNESS: 1368 5th Place Northwest,  
4 I believe is the address.

5 Q. All right. And was that Mr. Bester's  
6 residence?

7 A. Yes, sir.

8 Q. All right. When you got there, what if  
9 anything did you find?

10 A. We found a few small bags that had what  
11 appeared to be cocaine residue inside the  
12 residence. There was a female and some children  
13 there. And we found a set of digital scales in the  
14 kitchen cabinet.

15 Q. Okay. Were those items collected?

16 A. Yes.

17 Q. Okay. Are those items here today?

18 (Witness reviewing documents.)

19 A. I don't believe so.

20 Q. Okay. But you never went back to where Ms.  
21 Bester's apartment was?

22 A. No, sir.

23 Q. Okay.

24 (Brief pause.)

25 MR. ANDERTON: All right. That's all

1 I've got for Deputy Eaton.

2 THE COURT: All right. Cross?

3 MR. BENSON: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BENSON:

6 Q. Detective[sic] Eaton, I'm Billy Benson, I  
7 represent Durrell Bester. I want to make sure on  
8 one thing. You testified early on that part of  
9 your job as an investigator was to purchase drugs  
10 from alleged drug dealers, correct?

11 A. Yes, sir.

12 Q. But you didn't actually purchase any from  
13 Mr. Bester?

14 A. I did not.

15 Q. Okay. All right.

16 And you were not there when the initial  
17 surveillance was going on, correct? You didn't  
18 join up until Mr. Bester had gotten to his  
19 mother's apartment, correct?

20 A. Halfway between his residence and his  
21 mother's apartment.

22 Q. So you were there when he and the white male  
23 went upstairs or went into his mother's apartment?

24 A. Yes, sir.

25 Q. Okay. But you didn't go inside with Mr.

1 Bester and the white male?

2 A. No, sir.

3 Q. Okay. So you have no idea what they did  
4 while they were inside?

5 A. No, sir.

6 Q. Okay. And you said my client was carrying,  
7 or Mr. Bester was carrying a bag?

8 A. Yes, sir.

9 Q. Could you describe the bag?

10 A. It was a white plastic bag, typical of what  
11 you get at the grocery store.

12 Q. Like a Wal-Mart grocery bag --

13 A. Yes, sir.

14 Q. -- something I have like a thousand of in  
15 the drawer next to my refrigerator, to put wet  
16 clothes in, trash that sort of thing?

17 A. Yes, sir.

18 Q. So nothing distinctive about that bag?

19 A. You're correct.

20 Q. Okay. All right, and then Mr. Bester and  
21 the white male came back out, and y'all followed  
22 him for a time. How far did you follow them?

23 A. We followed them quite a ways from Center  
24 Point all the way to Homewood, waiting for the  
25 patrol unit to get caught up to us.

1 Q. Okay. So Center Point to Homewood that's,  
2 you know, 15 --

3 A. 15 miles or so.

4 Q. -- 15 miles or so?

5 Okay. And just so we're clear, Mr. Bester  
6 was a passenger in the car?

7 A. Yes, sir.

8 Q. Okay. And it was not his vehicle?

9 A. No, sir.

10 Q. Okay. And the black plastic box, to your  
11 knowledge, was it -- Did anybody check it for  
12 fingerprints or?

13 A. No, sir.

14 Q. Okay. There is a cell phone in there, did  
15 anybody check to see whose cell phone it was?

16 A. No, sir.

17 Q. And you've been an investigator five years,  
18 as part of Sheriff's Department for 14?

19 A. Yes, sir.

20 Q. Okay. And you said you did eventually  
21 execute a search warrant on Mr. Bester's  
22 residence, a house?

23 A. Yes, sir.

24 Q. But you didn't find anything that you  
25 brought -- charged against him?

1 A. That's correct.

2 (Brief pause.)

3 Q. Okay. I think I asked this, but let me make  
4 sure. You said the driver declined consent to  
5 search the vehicle?

6 A. Yes, sir.

7 Q. Mr. Bester was not the driver?

8 A. No, sir.

9 Q. And it wasn't his vehicle?

10 A. That's correct.

11 Q. Okay.

12 MR. BENSON: That's all I have, Your  
13 Honor.

14 REDIRECT EXAMINATION

15 BY MR. ANDERTON:

16 Q. The black box came out of the piece of the  
17 luggage that Mr. Bester claimed; is that right?

18 A. Yes, sir.

19 Q. Okay.

20 MR. ANDERTON: That's all.

21 MR. BENSON: One quick question, Your  
22 Honor.

23 RECROSS-EXAMINATION

24 BY MR. BENSON:

25 Q. Other than your testimony that Mr. Bester

1 told you that that was his luggage, you have no  
2 other evidence that that was his luggage?

3 A. No, sir.

4 Q. Okay.

5 MR. ANDERTON: Nothing further from  
6 this witness, Your Honor.

7 THE COURT: All right. Ladies and  
8 gentlemen of the jury, if you have a burning  
9 question in your mind as a result of Officer  
10 Eaton's -- Deputy Eaton's testimony, I will  
11 allow you to ask it if it is admissible.  
12 This is not an opportunity to become a  
13 lawyer all of sudden. But it is an  
14 opportunity to clear a question you may have  
15 remaining in your mind as a result of the  
16 witness's testimony and the lawyer's  
17 questioning. And the procedure is that, if  
18 you wish to ask a question I will allow you  
19 to ask the question, I will approve the  
20 question, and then the witness will answer.

21 Once you receive the answer from the  
22 witness, you should not comment concerning  
23 the witness's answer. Okay.

24 Does anyone have a question for Deputy  
25 Eaton -- Yes, sir?



1           A JUROR: I'm not sure if I'm allowed  
2 to ask it or not. Is there a reason why the  
3 box wouldn't have been fingerprinted?

4           THE COURT: Do you know the answer to  
5 that question?

6           THE WITNESS: Because Mr. Bester had  
7 owned up to owning the luggage. I didn't  
8 see the need to have it fingerprinted,  
9 because he'd already told me that the bag  
10 that it was in was his.

11          THE COURT: Anyone else?

12                Yes, ma'am?

13          A JUROR: I'm just trying to understand  
14 where was the white plastic bag found? Was  
15 it found at the house or at the apartment?

16          THE COURT: Can you answer? Do you  
17 know the answer?

18          THE WITNESS: Yes, sir --

19          MR. BENSON: But, Your Honor --

20          THE COURT: Come up.

21                   (Side bar.)

22          THE COURT: Okay. He can't answer that  
23 question.

24          A JUROR: He cannot.

25          THE COURT: He cannot. Okay.

1 He cannot, that's all I can say.

2 Anyone else?

3 (No response.)

4 THE COURT: Any follow-up then for the  
5 State?

6 MR. ANDERTON: No, sir.

7 THE COURT: I'm sorry. Yes, sir?

8 A JUROR: I want to ask a question.  
9 Where was the -- was the plastic bag in the  
10 truck -- when they stopped them was the  
11 plastic bag in the truck, when he was taken  
12 to his mother house?

13 THE COURT: Okay. He can't answer  
14 that.

15 Any follow-up for the defense?

16 MR. BENSON: No, Your Honor.

17 THE COURT: All right. You may stand  
18 down.

19 (Witness is released.)

20 THE COURT: Who's your next witness  
21 State?

22 MR. ANDERTON: Judge, we call -- the  
23 State would called Ali Daniels, please.

24 THE COURT: Ali Daniels

25 MR. BENSON: Judge, may we approach?

1 THE COURT: Uh-huh.

2 (Off the record discussion.)

3 DEPUTY ALI DANIELS,

4 A witness for the State,

5 Was duly sworn and testified as follows:

6 THE COURT: Have a seat, get  
7 comfortable, scoot up towards the  
8 microphone, and watch your knees down there.

9 (Witness complies.)

10 THE COURT: State your full name for  
11 the record, please, sir.

12 THE WITNESS: Okay. Ali Daniels.

13 THE COURT: Go ahead.

14 DIRECT EXAMINATION

15 BY MR. ANDERTON:

16 Q. Deputy Daniels, let me get you to spell your  
17 first name and your last name for the benefit of  
18 the court reporter, please.

19 A. Okay. First name is Ali, A-L-I. Last name is  
20 Daniels, D-A-N-I-E-L-S.

21 Q. All right. Deputy Daniels, who do you work  
22 for?

23 A. The Jefferson County Sheriff's Department.

24 Q. In what capacity -- What do you do?

25 A. Center Point patrol.

1 Q. Okay. How long have you been with the  
2 Jefferson County Sheriff's Office?

3 A. Going on 12 years now.

4 Q. All right. During that time have you always  
5 been patrol deputy?

6 A. No, sir.

7 Q. Okay. What were your other duties?

8 A. Before I was on patrol, I worked inside the  
9 Corrections Facility.

10 Q. All right.

11 A. For Jefferson County.

12 Q. All right. How long did you work over  
13 there?

14 A. Four years and like four months.

15 Q. Okay. So you've been patrol for about  
16 eight?

17 A. About -- yeah, give or take. A little bit.

18 Q. All right. Deputy Daniels, let me direct  
19 your attention to March 24th, 2008. Do you know a  
20 deputy by the name of Mark Eaton with the  
21 Sheriff's Office?

22 A. Yes, sir.

23 Q. All right. And did you have occasion to  
24 respond to an area here in Jefferson County on the  
25 24th of March 2008.

1 A. Yes, sir.

2 Q. All right. What was your purpose in  
3 responding?

4 A. To make a traffic stop. And identify him.

5 Q. All right. When you are on patrol and more  
6 specifically on the 24th of March, 2008 when you  
7 were on patrol, were you in a marked unit?

8 A. I was.

9 Q. All right. And that's got the lights, and  
10 that's got the siren, and that's got all the  
11 markings on the side of car?

12 A. Yes, sir.

13 Q. All right. Do you know what kind of vehicle  
14 Mark Eaton was in?

15 A. At the present time of the call, I didn't  
16 know.

17 Q. Okay.

18 A. If I'm not mistaken back then, I want to say  
19 it was a van.

20 Q. Okay.

21 A. I could be wrong, but I think it was a van,  
22 at the time.

23 Q. All right. And on that occasion did you in  
24 fact pull an automobile over?

25 A. I did.

1 Q. All right. What kind of an automobile did  
2 you pull over?

3 A. It was a pickup, blue in color.

4 Q. Okay. And at that time, did you come to  
5 know a fellow by the name of Durrell Bester?

6 A. Yes, sir.

7 Q. All right. Do you see Mr. Bester in court  
8 today?

9 A. Yes, sir.

10 Q. Would you point him out and tell me what  
11 he's wearing today, please?

12 A. Black man with the white button down shirt  
13 and a blue tie (pointing).

14 MR. ANDERTON: Okay. Let the record  
15 reflect that the witness has indicated the  
16 Defendant, Durrell Bester.

17 THE COURT: So noted.

18 Q. Now, at the time that you pulled them over,  
19 could you tell if anything at all about where Mr.  
20 Bester was located in the car?

21 A. He was the driver of the vehicle. At the  
22 time, I was talking to him I saw somethings, as far  
23 as like reaching up around the seat. I couldn't  
24 tell what it was --

25 Q. All right. He was the driver?

1 A. If I'm not mistaken, it was a little over a  
2 year ago. I want to say he was the driver.

3 Q. Okay. All right. Wasn't Mr. Bester removed  
4 from the car?

5 A. He was.

6 Q. Okay. And did you in fact -- Well, when  
7 Mr. Bester was removed from the car where was he  
8 placed?

9 A. In the back seat of my patrol car.

10 Q. All right. Mark Eaton, does he also run the  
11 K-9 Unit?

12 A. He does.

13 Q. Or one of the drug dogs?

14 A. Uh-huh.

15 Q. All right. And did you -- were you present  
16 when the drug dog sniffed around the vehicle?

17 A. I was.

18 Q. All right. Did you -- did you see whether  
19 or not that dog indicated or do you know?

20 A. I saw where he indicated.

21 Q. Okay.

22 A. I don't know much about K-9 training when it  
23 comes to searching.

24 Q. I understand.

25 A. But I guess, when it picked up a scent or

1 whatever it stopped and gave a signal.

2 Q. Okay. All right. And at that time, to your  
3 knowledge, was something collected from that  
4 truck?

5 A. It was.

6 Q. All right. And who did that collection?

7 A. Eaton. Mark Eaton.

8 Q. All right. Deputy, where did you stop that  
9 particular truck?

10 A. This particular day it was on Valley Road, I  
11 know it was a parking lot of Arby's, I can't  
12 remember the cross street.

13 Q. Okay.

14 A. At that particular time it was in the parking  
15 lot of Arby's, on the back end of it.

16 Q. Was that here in Jefferson County?

17 A. Yes, sir.

18 Q. Was it in the Birmingham Division of  
19 Jefferson County?

20 A. Yes, sir.

21 MR. ANDERTON: That's all I have for  
22 this witness, Your Honor.

23 THE COURT: Cross?

24 CROSS-EXAMINATION

25 BY MR. BENSON:



1 Q. Real quick questions, Deputy Daniels.  
2 You're saying Mr. Bester was driving the vehicle.  
3 Was it his vehicle?

4 A. I really don't remember if it was registered  
5 in his name or not, at that time.

6 Q. Okay. And you weren't part of the actual  
7 search?

8 A. No, I wasn't -- No, I didn't do any searching  
9 at that point in time.

10 Q. When Durrell was placed -- he was placed in  
11 your vehicle, correct?

12 A. Yes.

13 Q. Did you conduct a search of him before you  
14 placed him in your vehicle --

15 A. I patted him down for officer safety.

16 Q. Did find anything on him at that time?

17 A. No, I didn't.

18 Q. No illegal drugs?

19 A. Huh-uh.

20 Q. No drug paraphernalia?

21 A. No.

22 MR. BENSON: That's all I have.

23 MR. ANDERTON: I have nothing further  
24 for Deputy Daniels. May he be excused, Your  
25 Honor?

1 I'm sorry, I forgot.

2 THE COURT: Any questions for Deputy  
3 Daniels?

4 (No response.)

5 THE COURT: All right. Then, Deputy  
6 Daniels, you may now be excused.

7 (Witness is released.)

8 THE COURT: State, call your next  
9 witness.

10 MR. ANDERTON: The State calls Hattie  
11 French.

12 SERGEANT HATTIE FRENCH,

13 A witness for the State,  
14 Was duly sworn and testified as follows:

15 THE COURT: Have a seat, get  
16 comfortable, scoot up towards the  
17 microphone, and watch your knees down there.

18 (Witness complies.)

19 THE COURT: Go ahead, State.

20 DIRECT EXAMINATION

21 BY MR. ANDERTON:

22 Q. Tell us your name, please.

23 A. Hattie French.

24 Q. All right. For purposes of the court  
25 reporter, please spell your first and last name?

- 1 A. H-A-T-T-I-E. F-R-E-N-C-H.
- 2 Q. All right. Ms. French, where do you work?
- 3 A. Jefferson County Sheriff's Department.
- 4 Q. In what capacity?
- 5 A. Sergeant of Vice and Narcotics.
- 6 Q. All right. As sergeant of Vice and
- 7 Narcotics, what do you do?
- 8 A. I supervise the Vice and Narcotics Unit.
- 9 Q. All right. How long have you been the
- 10 supervisor?
- 11 A. About three years.
- 12 Q. How long have you been a sergeant?
- 13 A. I've been a sergeant about three years.
- 14 Q. Okay. How long have you been with the
- 15 Sheriff's Office?
- 16 A. About 29.
- 17 Q. Okay. Sergeant French, were you working
- 18 with the Sheriff's Office on March 24th, 2008?
- 19 A. Yes, I was.
- 20 Q. All right. And did you have an occasion to
- 21 participate in the investigation and potential
- 22 execution of a search warrant of the residence of
- 23 Durrell Bester?
- 24 A. Yes.
- 25 Q. Okay. What was your part in it -- Now, that

1 afternoon did you have occasion to be doing  
2 anything in the area around the residence of  
3 Durrell Bester?

4 A. Yes, I did.

5 Q. What were you doing?

6 THE COURT: Let me ask you something.  
7 And maybe I slept through it.

8 But has anybody mentioned a time of  
9 day?

10 MR. ANDERTON: I'm sorry?

11 THE COURT: I keep waiting to hear --

12 MR. ANDERTON: -- a time of day?

13 THE COURT: -- if it was morning,  
14 afternoon, night, whatever.

15 MR. ANDERTON: I don't think anybody  
16 has, Your Honor. But I will be more than  
17 happy.

18 THE COURT: It would be nice.

19 MR. ANDERTON: Yes, sir.

20 Q. Where was the search warrant to be executed?

21 A. It was on -- the address was 1368 5th Place  
22 Northwest.

23 Q. All right. And when you were around the  
24 apartment, what time of day was it?

25 A. That was the house where the search warrant

1 was to take place.

2 Q. Okay. All right. And at that time, about  
3 what time was it? About?

4 A. It was in the afternoon.

5 Q. Okay. Late, later afternoon?

6 A. Early afternoon.

7 Q. Okay. All right. You said you were running  
8 surveillance on the house, what do you mean?

9 A. We was doing -- we went by to check and see  
10 if the vehicle was at the house.

11 Q. Okay. And who is "we"?

12 A. Myself and Deputy Washington.

13 Q. Okay. Is that the Deputy Jude Washington?

14 A. Yes, sir.

15 Q. Okay. Other than driving by the house, were  
16 you watching it from a distance or -- on the TV  
17 and movies going to tell us about surveillance  
18 siting down the block, kind of looking at it  
19 through binoculars, is that what y'all were doing?

20 A. We was parked down the street where we could  
21 --

22 Q. Okay?

23 A. -- have visual on the driveway.

24 Q. Okay.

25 A. And the house.

1 Q. Okay. Did you see anything happen?

2 A. Yes, we did.

3 Q. What did you see?

4 A. Saw an older model blue pickup truck,  
5 occupied twice by two white males, come driving up  
6 the street at a high rate of speed. Pull into the  
7 driveway. Backed back, and then one of the white  
8 males got out and went to the porch area. Black  
9 male came out of the house and they went to  
10 throwing stuff in the back of the pickup truck.  
11 And then, all three occupants was in the truck and  
12 they went down 5th Place and we pulled out behind  
13 them.

14 Q. Okay. Now, you said there were two white  
15 males in the truck, and one of them got out?

16 A. Yes, sir.

17 Q. All right. You said there was a black male  
18 there, where did the black male come from?

19 A. The black male came out of the house.

20 Q. All right. Do you know a fellow -- or have  
21 you come to know a fellow by the name of Durrell  
22 Bester?

23 A. Yes, sir.

24 Q. All right. And do you see him in court  
25 today?

1 A. Yes, sir.

2 Q. All right. Would you point him out and tell  
3 me what he is wearing today?

4 A. He is sitting right there (pointing) and he  
5 has on a white shirt, and a black and white tie.

6 Q. All right.

7 MR. ANDERTON: Let the record reflect  
8 the witness has indicated Durrell Bester.

9 THE COURT: So noted.

10 Q. Now, the black male you saw, who was  
11 throwing stuff into the back of this truck with  
12 the white male; do you know who that black male  
13 was?

14 A. The black male was Durrell Bester.

15 Q. Okay. Okay. So you saw Mr. Bester -- Can  
16 you tell us what kind of stuff he was putting in  
17 the back of the truck, from what you could tell?

18 A. There was -- I saw some white bags, there was  
19 like luggage, a black, like, a gym bag and  
20 clothes -- Clothes --

21 Q. Uh-huh.

22 A. And he had a white bag in his hand.

23 Q. Okay. What did he do with that white bag?

24 A. He got inside of the truck.

25 Q. Okay. Did he take that white bag into the

1 truck or did he put in the bed with everything  
2 else?

3 A. He took it inside the truck.

4 Q. Into the truck?

5 A. Into the truck.

6 Q. Okay. Now, you said that the truck pulled  
7 off and then y'all followed it?

8 A. Yes, we did.

9 Q. Where did you follow it to?

10 A. We followed it over to some apartments on  
11 Huffman Road.

12 Q. Okay. When you got there, do you know a  
13 fellow by the name of Mark Eaton?

14 A. Yes, I do.

15 Q. How do you know Deputy Eaton?

16 A. He works with the Vice and Narcotics Unit  
17 where I supervise.

18 Q. Okay. Was Deputy Eaton notified that y'all  
19 were moving from the search warrant location?

20 A. Yes, he did.

21 Q. All right. And did he in fact join you over  
22 at this apartment complex in Center Point?

23 A. Yes, he did.

24 Q. When you got to that apartment complex, can  
25 you tell us what, if anything, you saw?



1 A. I observed the white male and the black male,  
2 who was Mr. Bester, get out of the vehicle. He had  
3 a larger white bag in his hand. Like a garbage  
4 bag --

5 Q. Okay. Who had that --

6 A. I think the white male had the larger garbage  
7 bag.

8 The smaller bag, Mr. Bester had it, and also  
9 he went -- they went inside this apartment, I think  
10 it was apartment E. The white male come back out  
11 and got a piece of electronic equipment, looked  
12 like a game or something. And he went back inside  
13 the apartment.

14 And they were in there for, I guess, five or  
15 six minutes, and they both come out and drove off.

16 Q. Now, the white bag that you saw Mr. Bester  
17 carry into the apartment, did it appear to be  
18 consistent with the white bag that you saw him  
19 bring out of his residence?

20 A. Yes.

21 Q. And put in the front part of the truck with  
22 himself and not in the bed?

23 A. Yes.

24 Q. Okay. All right. When Mr. Bester left the  
25 apartment, did he have that white bag with him?

1 A. No, he did not.

2 Q. Okay. What happened once the white male,  
3 who went inside the apartment, and Mr. Bester, who  
4 went inside the apartment, once they came out of  
5 the apartment and got back in the truck; what  
6 happened then?

7 A. They drove off, and the -- there was a female  
8 that came out of the house and went around the  
9 corner, went across the street, like she was going  
10 to the store.

11 Q. Okay. Let me show you what has been marked  
12 as State's Exhibit 2 for identification purposes.

13 See if you recognize that photograph,  
14 please?

15 (Witness reviews exhibit.)

16 A. This is she.

17 Q. Okay. Is that the female that went out like  
18 she was going to the store?

19 A. Yes.

20 Q. Okay.

21 Now, what did you do when she left the  
22 apartment?

23 A. We stayed at the apartment. Myself and  
24 Deputy Washington stayed at the apartment.

25 Q. Okay. All right. And did anybody follow

1 this woman who left?

2 A. Yes. There was some more deputies that  
3 followed them.

4 Q. Okay. All right. Did she, in fact, return  
5 to the apartment?

6 A. She did return.

7 Q. When she returned, what if anything did you  
8 do at that point?

9 A. Myself, Deputy Washington, Deputy Hail and  
10 Deputy Finley and Deputy Morris. We walked up to  
11 her to talk to her. I introduced myself to her and  
12 advised her who I was.

13 And told her -- asked her could I come in  
14 and talk with her. And she -- matter of fact she  
15 stood right there at the door to talk to me. And I  
16 did explain to her who I was and why I wanted to  
17 talk to her. I told her I wanted to talk to her  
18 concerning her son.

19 Q. Okay.

20 A. And she said come in.

21 Q. Did she tell you who she was?

22 A. She said she was -- she said her name was  
23 Dorothy Bester. I think that's what she said.

24 Q. All right. And is that the same lady who  
25 was pictured in the photograph that had been

1 marked State's Exhibit No. 2 for identification?

2 A. Yes, it is.

3 Q. All right. And is that how that lady  
4 appeared on that particular occasion?

5 A. Yes, sir.

6 MR. ANDERTON: State would move to  
7 introduce State's Exhibit No. 2.

8 MR. BENSON: No objections.

9 THE COURT: 2 is in.

10 (Whereupon, State's Exhibit Number  
11 2 was received into evidence.)

12 THE COURT: What address was she at?

13 THE WITNESS: She was at [REDACTED]  
14 [REDACTED]

15 Q. Is [REDACTED] here in  
16 Jefferson County?

17 A. Yes, it is.

18 Q. Is it in the Birmingham division of  
19 Jefferson County?

20 A. Yes, it is.

21 Q. All right. In your talking with Ms. Bester,  
22 did she indicate to you that you could look around  
23 her apartment? How did that conversation take  
24 place?

25 A. I explained to her that we had followed her

1 son from over on 5th Place to that apartment.

2 Q. Okay.

3 A. And she said something that he had gotten  
4 into it with his girlfriend.

5 Q. Okay.

6 A. And I told her that we was doing surveillance  
7 on him, he was under investigation, that we were  
8 actually doing surveillance on him.

9 Q. Okay.

10 A. And she just -- she was said, okay. And then  
11 I told her that when her son got out of his vehicle  
12 -- out of the vehicle, that he had a white bag in  
13 his hand. And I said, he brought it into the  
14 apartment. When he left he did not have it. Can  
15 you tell me what he did with the bag.

16 Q. Uh-huh.

17 A. And she said, "Am I going to jail?"

18 And I said, "No, ma'am you are not part of  
19 our investigation, your son is."

20 And I say, "If you don't mind, can we look  
21 around?"

22 And she said, "Yes", I said, "Well, let me  
23 let you sign a consent form first."

24 She said, "Come on I'll show you."

25 I said, "No, let us take care of this

1 first."

2 Q. Okay. Do you have that consent form with  
3 you?

4 A. I don't have it.

5 Q. All right.

6 (Whereupon, the prosecutor is  
7 showing defense counsel an  
8 exhibit.)

9 (Whereupon, State's Exhibit Number  
10 15 was marked for identification.)

11 MR. BENSON: Your Honor, may we  
12 approach?

13 THE COURT: Sure, come on up.

14 (Side bar off the record.)

15 Q. Let me show you what has been marked for  
16 identification purposes, State's Exhibit No. 15.

17 Do you recognize what State's Exhibit 15  
18 is?

19 (Witness reviews document.)

20 A. Yes.

21 Q. All right. Now, is that a consent to search  
22 form that Ms. Bester signed?

23 A. Yes, it is.

24 Q. All right. Is that the original?

25 A. This is a copy.

1 Q. Okay. All right. The original that Ms.  
2 Bester signed, did it look exactly like that?

3 A. Yes.

4 Q. Does State's Exhibit 15 appear to be  
5 different in any manner at all, with the exception  
6 of the State's sticker? And I don't know whether  
7 your original had holes up in the top.

8 But with those two exceptions did the  
9 consent to search that Ms. Bester signed appear to  
10 be exactly the way that piece of paper appears?

11 A. Yes. Only other thing that the star may have  
12 been gold.

13 Q. Okay. All right?

14 A. And it appears to be the same.

15 Q. All right. When Ms. Bester signed that  
16 piece of paper, or excuse me, the original of that  
17 -- Well, first of all, do you know where the  
18 original is?

19 A. It should be with Deputy Eaton's case file.

20 Q. Okay. Do you have access to Deputy Eaton's  
21 case file?

22 A. I don't have it.

23 Q. Okay.

24 A. I'm sure -- it should be in the office with  
25 the records.

1 Q. Okay.

2 A. Should be.

3 Q. All right. Again, does State's Exhibit 15  
4 appear to be substantially the same as the  
5 original in this particular case?

6 A. Yes.

7 Q. All right. And are copies of consent to  
8 search form are they normally kept by the  
9 Sheriff's Office.

10 A. (Pause) Yes --

11 Q. Or do we just keep the originals?

12 A. What you mean?

13 Q. Okay. Is this a Xerox copy of the  
14 original --

15 A. That's a Xerox copy.

16 Q. Okay?

17 A. When we give them to the D.A., we give the  
18 D.A. a Xeroxed copy?

19 Q. All right. And does that appear to be a  
20 Xeroxed copy of this particular form?

21 A. Yes, it does.

22 Q. All right. Now, prior to Ms. Bester signing  
23 that form, did Ms. Bester tell you it was all  
24 right for you to come inside her apartment?

25 A. Yes, she did.



1 Q. All right. And did she indicate to you that  
2 she would in fact show you around her apartment?

3 A. Yes, she did.

4 Q. All right. And that was prior to her ever  
5 signing that particular piece of paper?

6 A. That's correct.

7 Q. All right. You asked her to sign a consent  
8 form?

9 A. I asked her to sign a consent form.

10 Q. The writing on that document is whose  
11 writing?

12 A. I want to say it's Deputy Roger Morris.

13 Q. Okay. All right. Were you present when the  
14 consent to search form was filled out?

15 A. Yes, I was.

16 Q. All right. And did you in fact see Ms.  
17 Bester sign that particular form?

18 A. I did.

19 Q. Do you know if anyone read that form to Ms.  
20 Bester prior to her signing it?

21 A. Yes.

22 Q. Who did?

23 A. I read it to her.

24 Q. Okay. Tell us if you will what you read to  
25 Ms. Bester prior to her signing the form?

1 A. Okay. It says:

2 "Consent to search premises, State of  
3 Alabama, Jefferson County. I am, and then the  
4 individual's name, a resident of whatever the  
5 address is, do voluntarily consent and authorize  
6 the following deputy sheriffs: Morris, Finley,  
7 Sergeant French and Washington to search my  
8 premises located at 1037 Apartment E Birmingham.

9 "To determine whether or not there is any  
10 illegal narcotics or stolen property on my  
11 premises. I hereby certify that I am over 18 years  
12 of age and have a possessory interest into the  
13 items of the said premises.

14 "I have not been -- I have not been made any  
15 threats or promises by the above named personnel.  
16 This 24th day March, 2008.

17 "I further affirm that I have been advised  
18 of my constitutional rights."

19 Q. All right.

20 A. And then it's signed and then it has two  
21 witnesses.

22 Q. All right. Who were the witnesses?

23 A. I think Roger Morris and myself.

24 Q. Okay. And did both of you watch Ms. Bester  
25 sign that particular form?

1 A. Yes. Sitting in her living room.

2 Q. Does that form appear to be an exact copy --  
3 an exact duplicate of the original form?

4 A. Yes.

5 Q. With the exception of that gold star up at  
6 the top, in that photograph -- I mean in that  
7 Xeroxed copy is black and white?

8 A. Yes.

9 Q. The holes and the State sticker?

10 A. That's it.

11 Q. But does it appear to be an exact duplicate?

12 A. It does.

13 Q. Other than those items?

14 A. It does.

15 MR. ANDERTON: State would move to  
16 introduce State's Exhibit 15.

17 MR. BENSON: Defense would object based  
18 on our discussion.

19 THE COURT: 15 is in.

20 (Whereupon, State's Exhibit Number  
21 15 was received into evidence.)

22 Q. Now, Sergeant French, once Ms. Bester signed  
23 that form, did she take you anywhere in the  
24 apartment?

25 A. Yes, she did.

1 Q. Where did she take you?

2 A. She carried me in the second bedroom.

3 Q. When you got to the second bedroom, what did  
4 you do or what did she say while y'all were there?

5 A. She said, "He put the bag over there".

6 Q. All right.

7 And where was she pointing when she said,  
8 over there?

9 A. In the corner behind, like a, little stereo.

10 Q. Okay. Let me show you State's Exhibit No.  
11 3.

12 (Whereupon, the Court reviews  
13 exhibits.)

14 Q. Let me show you State's Exhibit No. 3 and  
15 ask you if you recognize that.

16 (Witness reviews exhibit.)

17 A. Yes.

18 Q. What is that a photograph of, please?

19 A. This is a photograph of the bedroom where,  
20 over in the corner, where the radio is sitting up  
21 on top of the --

22 THE COURT: We're still talking about  
23 1037 --

24 THE WITNESS: Apartment E.

25 MR. ANDERTON: Apartment E. Yes, sir.

1 THE COURT: Huffman Road?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay.

4 Q. All right. State's Exhibit No. 4 -- I tell  
5 you what, I'm going to ask you to take a look at 4  
6 through 9 -- 3 through 9.

7 (Witness complies.)

8 Q. And ask you if you recognize each of those  
9 photographs.

10 A. Yes.

11 Q. All right. And what do Exhibits 3 through 9  
12 show, please?

13 A. It shows the bedroom and the place where the  
14 bag is located.

15 Q. Okay. Do each of the photographs State's  
16 Exhibit 3 through 9 truly and accurately depict  
17 that area as it appeared at the time of your  
18 consent to search given to you by Ms. Bester on  
19 the 24th of March, 2008?

20 A. Yes, it does.

21 Q. All right.

22 MR. ANDERTON: State would move to  
23 introduce State's Exhibits 3 through 9.

24 MR. BENSON: No objection.

25 THE COURT: They're in.

1 (Whereupon, State's Exhibit  
2 Numbers 3, 4, 5, 6, 7, 8 and 9  
3 were received into evidence.)

4 MR. BENSON: Judge, may I have the  
5 witness step down and show the jury what  
6 each of the photographs are?

7 THE COURT: You may. You may publish.

8 MR. ANDERTON: Thank you.

9 (Whereupon, the witness complies.)

10 MR. BENSON: Your Honor, is it okay if  
11 I move over here where I can see as the --

12 THE COURT: Sure.

13 Q. This is State's Exhibit No. 3. Tell us what  
14 this shows, please.

15 A. This is the bedroom. This is the corner  
16 right here (indicating), and that's a portable  
17 radio. And the bag was behind it.

18 Q. Okay. State's Exhibit No. 4?

19 A. Okay. This is a close-up of the stereo that  
20 was in the corner, where the bag was behind it.

21 Q. When Ms. Bester pointed out the corner with  
22 the radio.

23 A. Uh-huh.

24 Q. Could you see the bag when she first pointed  
25 it out?

1 A. No, I could not.

2 Q. All right. What did you do when she pointed  
3 out the corner with the radio?

4 A. I went over and looked behind it and saw  
5 there was a bag.

6 Q. And you could see the bag at that --

7 A. I could see the bag at that point.

8 Q. Let me show you State's Exhibit No. 5. And  
9 ask you what that is.

10 A. Okay. That's the stereo (indicating), and  
11 that's the bag behind it (indicating) in the  
12 corner.

13 Q. Okay. And have you pulled the bag up at  
14 some point or is it just -- -

15 A. No, it was just like that.

16 Q. Just like that. All right.

17 But we couldn't see it in that picture.

18 A. Because the angle of the -- the angle of the  
19 camera was just straight ahead, but when they beam  
20 down on it, turn the camera over, it will be seen.

21 Q. Okay. Once you looked over the top of it?

22 A. Yeah. Look over the top.

23 Q. Okay. State's Exhibit No. 6?

24 A. Okay. That's the bag. And it was pulled up,  
25 lifted it up. Some one is holding it, and the

1 picture was taken.

2 Q. Okay. And State's Exhibit No. 7?

3 A. Okay. This is the items that was inside the  
4 bag and was put on the bed. And photograph was  
5 taken.

6 Q. What are those items?

7 A. Electronic digital scales and what appears to  
8 be cocaine.

9 Q. Okay.

10 MR. ANDERTON: Judge, may I pass these  
11 around?

12 THE COURT: Didn't you just let them  
13 look at them?

14 MR. ANDERTON: I did. They were more  
15 over here. That's okay, I'll leave them  
16 here.

17 Q. All right. Sergeant French, did you then  
18 examine that contents of what was in the plastic  
19 bag?

20 A. Yes, we did.

21 Q. What was in the plastic bag?

22 A. In the plastic bag was cocaine, what appeared  
23 to be cocaine, and some digital scales.

24 Q. Okay. Was that cocaine in fact collected.

25 A. It was collected.



1 Q. All right. And who collected it?

2 A. I'm not exactly sure who collected it.

3 Q. Do you know who that is? L.A.G.

4 (Witness reviewing exhibit.)

5 MR. BENSON: Your Honor, I believe she  
6 has testified she doesn't know who collected  
7 the cocaine.

8 THE COURT: Are you going somewhere?

9 Q. All right. Have you had a chance to -- Let  
10 he show you State's Exhibit No. 14.

11 A. Okay.

12 Q. All right. And do you recognize that  
13 particular package?

14 A. I didn't see it after it was packaged.

15 Q. Okay.

16 A. The deputies would have done that. So I  
17 didn't have anything --

18 Q. All right. In examining State's Exhibit No.  
19 14 do you recognize those particular initials?

20 A. These initials tell me who sealed it.

21 Q. All right. And who would that be?

22 A. Deputy Gast.

23 Q. Okay. And does it indicate who that item  
24 was recovered by?

25 A. It was recovered by me.

1 Q. Okay. And the Detective is?

2 A. Deputy Gast.

3 Q. Gass, G-A-S-S?

4 A. G-A-S-T.

5 Q. G-A-S-T, Gast.

6 Okay. When you turned these items over to  
7 Deputy Gast, do you recognize the contents of  
8 what's in --

9 A. Yes.

10 Q. -- 14?

11 A. Yes.

12 Q. Okay. All right. Do you recognize those  
13 items?

14 A. Yes, I do.

15 Q. All right. Do those appear to be the same  
16 items --

17 A. It appears to be the same.

18 Q. Okay. Did you perform any tests on what  
19 appeared to be cocaine, out on the scene that day?

20 A. I'm not sure where I did it or I directed one  
21 of the other deputies. We do, do a field test.

22 Q. Just do a field test. That does what?

23 A. I use this little tester, and you put just a  
24 little of the substance and it will turn a certain  
25 color.

1 Q. Okay. And was that a positive test for the  
2 presence of cocaine?

3 A. It was positive.

4 Q. Okay. These items were they then collected?

5 A. They were collected.

6 Q. Okay. And turned over to, I guess, they  
7 were sealed up by Deputy Gast --

8 A. They were sealed up by Deputy Gast.

9 Q. Okay. All right. Between the time you  
10 collected them to the time you turned them into  
11 Deputy Gast, were those items in your care,  
12 custody and control the entire time?

13 A. They were.

14 Q. Okay. Did you make any additions or  
15 deletions to them?

16 A. Say what?

17 Q. Any additions or deletions to them, with the  
18 exception of whatever you did for your presumptive  
19 test out on the scene.

20 A. That was it.

21 Q. Okay. And were they in the same, or  
22 substantially the same, condition when you turned  
23 them over to Deputy Gast as they were when you  
24 first collected them?

25 A. Yes. Like I said, we collected it and

1 brought it back to the office and they packaged it.

2 Q. Okay. All right.

3 Now, in addition to those -- that item --

4 Let me see. Were additional items found in the  
5 room?

6 A. Yes, it was.

7 Q. Okay. What else was found there in the  
8 room?

9 A. There was a bag in the floor, a white bag in  
10 the floor. And I think, you can just see there was  
11 some scales, some baggies, and a glass Pyrex type  
12 cup, that had residue in it that was in the floor.  
13 And there was clothes in the floor.

14 And she said that was -- those were his  
15 things that he just dropped them and left in the  
16 floor.

17 Q. All right. Let me show you what's been  
18 marked State's Exhibit 13. Do you recognize that,  
19 please?

20 (Witness reviews exhibit.)

21 A. The digital scales for one thing.

22 Q. You mentioned a Pyrex item in there.

23 Is that Pyrex item still in one piece?

24 A. No. What's left of it.

25 Q. Okay. But that was collected out on the

1 scene?

2 A. It was not broken. It gotten broken  
3 somewhere, over in property.

4 Q. Okay. Let me show you what's been marked  
5 State's Exhibits No. 8 and 9, which you have  
6 previously identified. And ask you, if you can  
7 recognize State's Exhibit 8.

8 A. Yes.

9 Q. What is State's Exhibit 8, please?

10 A. Okay. That's the bag that's sitting in the  
11 floor. And those are the baggies and some of the  
12 other items that were in the bag that was in there.

13 Q. Okay. And State's Exhibit No. 9, what does  
14 it show?

15 A. Okay, this is the same bag. That's the Pyrex  
16 dish. That's another black bag that had the scales  
17 in it, and those are the baggies.

18 Q. Okay. Those are some of the items found  
19 here in State's Exhibit 13; is that correct?

20 A. That's correct.

21 Q. All right. And each of those items was  
22 collected and taken to the evidence locker over at  
23 the Jefferson County Sheriff's Office?

24 A. It was taken to the Sheriff's Office and the  
25 deputy was responsible for storing them.

1 Q. Okay. You can have a seat.

2 (Witness complies.)

3 Q. Deputy French, was -- To your knowledge,  
4 were any other drugs found in that room?

5 A. Yes.

6 Q. All right. And who found the other drugs?

7 A. I think Deputy Washington.

8 Q. Okay. Do you know where those other drugs  
9 were found?

10 A. On the dresser. Chester drawer. Yes, it was  
11 the chester draw.

12 Q. Do you know what kind of drugs those were?

13 A. Yes.

14 MR. BESTER: Your Honor, can we  
15 approach?

16 THE COURT: Sure.

17 (Off the record side bar.)

18 Q. What kind of drugs were in fact found on the  
19 dresser?

20 A. Marijuana.

21 Q. Let me show you State's Exhibit No. 10. And  
22 ask you if you recognize that, please.

23 (Witness reviews exhibit.)

24 A. Yes.

25 Q. What is that?

1 A. This is the top of the chester draw or  
2 dresser whichever way you want to call it, with the  
3 marijuana on top.

4 Q. Okay. Have you seen -- you've been with the  
5 Sheriff's Office, how long, 29 years?

6 A. 29 years.

7 Q. 29 years. And you've been with Vice and  
8 Narcotics how long?

9 A. 21 years.

10 Q. Have you had occasion during the course of  
11 your 29 years, Sergeant French, to see marijuana?

12 A. Yes.

13 Q. On a few or numerous occasions?

14 A. Yes, numerous.

15 Q. Numerous?

16 A. Yeah.

17 Q. All right. And did you take a look at the  
18 item that was found on the dresser?

19 A. Yes, I did.

20 Q. All right. And did it appear to be  
21 marijuana to you?

22 A. Yes, it did.

23 Q. Do you know if that item was ever tested?

24 A. I don't have no idea. Since it was not my  
25 case, I didn't follow-up on that. I'm not sure.

1 Q. Okay.

2 A. Should have been.

3 (Brief pause.)

4 THE COURT: Ladies and gentlemen, allow  
5 me to give you a limited -- what we call a  
6 limiting instruction.

7 I.E., it limits your use of that  
8 particular piece of evidence that was  
9 State's Exhibit 11[sic].

10 The law says that evidence of other  
11 crimes, wrongs, et cetera, may be admissible  
12 to show certain things. Like, knowledge,  
13 absence of mistake, knowledge, design,  
14 intent, things like that.

15 So State's 11[sic] was not allowed into  
16 evidence to prove the basis of the charged  
17 offenses, in this case.

18 It was allowed, pursuant to Rule  
19 404(b), as evidence of other crimes or  
20 wrongs that were done to show a particular  
21 theme. Such as, knowledge, design, intent,  
22 absence of mistake, things like that, okay.  
23 And that's the only limited purpose that you  
24 can use that particular piece of evidence  
25 for.



1 Does that make sense?

2 Okay. Go ahead.

3 Q. Sergeant French, the cocaine, or what  
4 appeared to be cocaine out on the scene that you  
5 collected from the plastic bag, behind the radio,  
6 that Ms. Bester showed you and told you that  
7 Mr. Bester had brought into the apartment. The  
8 cocaine, did it have State tax stamps on that  
9 cocaine?

10 A. No, it did not.

11 Q. Did you examine -- how was it packaged?

12 A. It was in a plastic bag.

13 Q. Similar to the plastic bags you found on the  
14 scene?

15 A. Yes.

16 Q. All right. And did those plastic bags have  
17 any kind of tax stamp on them?

18 A. No, it did not.

19 Q. Okay. Did you do you any kind of -- you  
20 said you did a presumptive test to determine  
21 whether or not the presence of cocaine was there.  
22 Did you do any initial weighing of those items?

23 A. I didn't, no.

24 Q. Okay.

25 A. I just looked at and I told about what it

1 was.

2 Q. Okay.

3 A. Approximately.

4 Q. Did you have an idea of how many ounces it  
5 was or how much it was?

6 A. No. I knew it was more than one. It was  
7 more than 28 grams.

8 Q. Okay. Have you had a chance during the  
9 course of your work with the Vice/Narcotics with  
10 the Sheriff's Office to see more than one ounce of  
11 cocaine?

12 A. Yes.

13 Q. On few or many occasions?

14 A. Many.

15 Q. Was this consistent with more than 28 grams,  
16 at that point?

17 A. Yes, it was.

18 Q. All right. And those items were in fact  
19 sent to the Alabama State Department of Forensic  
20 Sciences for tasting and weighing; is that  
21 correct?

22 A. That's correct.

23 Q. Okay. (Pause) How many bag -- how many  
24 containers, excuse me, of cocaine were there in  
25 the plastic bag that you recovered?

1 A. Two, I believe.

2 Q. Okay. And did the contents of the two bags  
3 look similar to each other?

4 A. No. One look like it had more in it than the  
5 other.

6 Q. Okay. Did they appear to be the same forms  
7 of cocaine?

8 A. No. One was powder, one was crack.

9 Q. Okay. And what is crack?

10 A. Crack is another form after cocaine that  
11 they've cooked.

12 Q. Uh-huh.

13 A. They've added some additives to it and they  
14 cooked it.

15 Q. All right. And is it a cheap form of being  
16 able to -- or a cheap form of cocaine, if you  
17 will?

18 A. Yes, it is.

19 Q. It's easy to distribute?

20 A. It is easy, yes.

21 Q. Okay.

22 MR. ANDERTON: That's all I've got for  
23 Sergeant French.

24 THE COURT: Cross?

25 CROSS EXAMINATION

1 BY MR. BENSON:

2 Q. Sergeant French, I don't think I'm going to  
3 take too much of your time.

4 THE COURT: Hold on one second.

5 (Off the record.)

6 THE COURT: Okay. Go ahead.

7 Q. Okay. Sergeant French, you've been doing  
8 this for -- working for the Sheriff's Department  
9 for 29 years, correct?

10 A. Yes, sir.

11 Q. And a supervisor for three years?

12 A. Yes, sir.

13 Q. Okay. And you've got Ms. Bester, according  
14 to your testimony, sign that consent waiver in  
15 your presences?

16 A. Yes.

17 Q. But you didn't bring it to court with you?

18 A. It was not -- it was not my case. It was  
19 Deputy Eaton's case. So the paperwork --

20 Q. Did you bring the waiver with you Sergeant  
21 French --

22 A. It was not my place to bring it.

23 Q. So that would be no?

24 A. No. I didn't bring anything.

25 Q. Okay. And you testified that you were part

1 of the surveillance, you and I think you said it  
2 was Deputy Washington were surveilling of  
3 Mr. Bester's residence, correct?

4 A. Yes.

5 Q. Okay. And that a blue pickup with two white  
6 males drove up. And they started throwing stuff  
7 in the back of the vehicle, of the pickup truck,  
8 correct?

9 A. That's correct.

10 Q. What were those items?

11 A. One looked like maybe a gym bag. Clothing,  
12 you know, you can -- you know, bags with clothes in  
13 it. They was in a hurry so, as far as I can see it  
14 looked like somebody was moving or something.

15 Q. Any luggage?

16 A. I think it was a couple of luggage, couple of  
17 bags of luggage or something. I don't know whether  
18 anything was in it, but.

19 Q. Do you remember what they looked like?

20 A. I remember one being black and I can't tell  
21 you the exact colors of the other, no.

22 Q. And you testified that Mr. Bester, Durrell,  
23 got into the pickup truck carrying a white bag?

24 A. He had a smaller white bag, yes.

25 Q. Okay. And did you take any photos of this?

1 A. I didn't. No, I did not.

2 Q. Okay. Y'all were -- Did anybody, to your  
3 knowledge?

4 A. Not that I can remember.

5 Q. But Mr. Bester was under surveillance?

6 A. Yes.

7 Q. And nobody took any photos of what -- of  
8 Mr. Bester leaving, these white males coming up?

9 A. Well, the incident happened so quick, until  
10 -- we was unable to take photographs. Because we  
11 was trying to follow them and they was moving.

12 So it was kind of hard.

13 We just went to check to see if the vehicle  
14 was there before we executed the warrant.

15 Q. And you testified y'all followed the  
16 vehicle?

17 A. Yes.

18 Q. Where did you follow it to?

19 A. To Huffman Road. To the apartments.

20 Q. Okay. And did it make any stops in between,  
21 Mr. Bester's house and the apartment?

22 A. No, it did not.

23 Q. It didn't stop at a gas station?

24 A. Not that I can recall.

25 Q. Okay. Got to the apartment, your testimony

1 was that Mr. Bester and one of the white males  
2 exited the vehicle?

3 A. That's correct.

4 Q. And Mr. Bester went upstairs with a bag?

5 A. It was --

6 Q. Smaller white bag?

7 A. It was on the first level. It was not an  
8 upstairs.

9 Q. Okay. I don't know why I keep saying  
10 upstairs. I apologize.

11 But they went into the apartment?

12 A. Went into the apartment.

13 Q. Okay. It is your testimony that Mr. Bester  
14 walked into the apartment with a bag, consistent  
15 with this (indicating)?

16 A. Yes.

17 Q. Okay. It would also be consistent with the  
18 type bag a thousand people walked out of Wal-Mart  
19 with last night, wouldn't it?

20 A. Except I don't see the Wal-Mart sign on it.

21 Q. Well, same type bag?

22 A. Uh-huh

23 Q. Okay. Before going to Ms. Bester's  
24 apartment, had anybody been surveilling or  
25 watching her apartment?

1 A. No.

2 Q. Okay. So you don't have any idea who had  
3 been to her apartment prior to y'all's arrival?

4 A. No. Only thing we know is we followed him  
5 there.

6 Q. Okay. So you don't know who had been there,  
7 what had been brought there, or anything --

8 A. No. No, I do not.

9 Q. Okay. And just so we're clear, you saw  
10 Mr. Bester walk in with a bag consistent with that  
11 photograph that I showed you. But at that time,  
12 you didn't look in the bag Mr. Bester was  
13 carrying?

14 A. No, we didn't approach him. No.

15 Q. Okay. So at no time did you find Mr. Bester  
16 in possession of a grocery bag containing cocaine?

17 A. No, he had carried the bag in the house, no.

18 Q. He carried a bag in the house?

19 A. Okay. His mother said he brought that one  
20 though.

21 Q. So what you're telling us is that Durrell's  
22 mother took you and showed you where the cocaine  
23 was?

24 A. She showed us the bag -- where he brought the  
25 bag -- where he put the bag at when he came in.



1 Q. And let's go back to where you first went  
2 and got to the apartment, and went and talked with  
3 his mother.

4 A. All right --

5 Q. Or before that, you said she left and went  
6 to the store?

7 A. She went around the corner, I assume she went  
8 to the store.

9 Q. Okay.

10 A. And she said she went to the store.

11 Q. Did she come back with anything?

12 A. I don't remember whether she had anything in  
13 her hand, I really don't.

14 Q. Okay. Did she have a white bag?

15 A. She didn't have that white bag.

16 Q. How do you know that?

17 A. Because when we was talking to her about the  
18 bag. So if she had had the bag, she would have  
19 said here's the bag. But, no. She showed us that  
20 bag.

21 Q. Okay. And you say you asked her if you can  
22 come in?

23 A. Yes.

24 Q. And y'all talked to her about -- you  
25 testified to that y'all been surveilling

1 Mr. Bester, and that you suspected he had drugs in  
2 that bag, and you asked if it was okay to search  
3 her apartment?

4 A. Yes. Uh-huh. Asked if we could look around.

5 Q. And you testified you read her that waiver  
6 consent -- consent waiver, excuse me?

7 A. Yes.

8 Q. Why did you read it to her?

9 A. Because I wanted to make sure she understood.  
10 Because I told her she didn't have to let us look  
11 around.

12 Q. Okay. And so you explained to her --

13 A. And she asked was she in any trouble.

14 She said she didn't want to go to jail, was  
15 she in any trouble. I told her, no, she was not.

16 Q. Was it possible she signed that because she  
17 was afraid she was going to go to jail?

18 A. No, because I told her she wasn't going to go  
19 to jail. That she was not the one that we was  
20 investigating.

21 Q. Okay. All right, y'all went in the bedroom,  
22 found the bag containing cocaine behind the  
23 stereo? Correct?

24 A. Yes.

25 Q. And the others items that Mr. Anderton went

1 over with you.

2 Do you have any other evidence, other than  
3 Durrell's mother, telling you that Durrell put  
4 that bag there, that that bag belonged to Durrell  
5 Bester --

6 A. Huh-uh, no, I don't.

7 Q. To your knowledge is there any evidence that  
8 that bag --

9 A. No. No.

10 Q. Was that bag fingerprinted?

11 A. No, it's not.

12 Q. Okay.

13 To your knowledge was anything in the room  
14 fingerprinted?

15 A. No.

16 Q. Is there any evidence that Mr. Bester was  
17 even in that room?

18 A. Other than the fact that his clothing was  
19 there. And his mother said he went in there.

20 Q. Okay. You said his clothing was there, how  
21 do know it was his clothing?

22 A. Well, because she said that bag was his. It  
23 had some tennis shoes in it, she said they belonged  
24 to him.

25 Q. Okay. And you testified that the white male

1 was carrying a large white bag, correct?

2 A. Yes.

3 Q. Do you know what was in that bag?

4 A. It's my understanding that there were some  
5 clothes in the bag. That it was his clothes in the  
6 bag.

7 Q. Okay. I'm asking you if you know. I'm not  
8 asking what your understanding --

9 A. Only thing she said somebody helped him bring  
10 some clothing in the house and brought some games  
11 in the house so.

12 Q. And --

13 A. Because I specifically asked her about the  
14 white male.

15 Q. Okay. So y'all -- you are outside when  
16 Mr. Bester and the white male went into the  
17 apartment?

18 A. Yes.

19 Q. So you have no idea what they did while they  
20 was inside --

21 A. While they was inside, no.

22 Q. Okay. And you then, just so we're clear,  
23 you have no idea who had been in the apartment,  
24 Ms. Bester's apartment, prior to y'all's arrival?

25 A. No, I don't. No.

1 Q. Okay. Have no idea the contents of the  
2 apartment prior to y'all's arrival?

3 A. I've never been in that apartment prior to  
4 that day.

5 Q. Okay. And you were shown a photograph of  
6 marijuana that was found. Durrell hasn't been  
7 charged with possession of marijuana, correct?

8 A. Not that I'm aware -- I'm not sure what he  
9 was charged with, other than the cocaine.

10 Q. Okay. To your knowledge --

11 A. Not that I know of.

12 Q. Okay. Are you aware of any evidence that  
13 that marijuana belonged to Durrell Bester?

14 A. I don't know whether there was a discussion  
15 as to who the marijuana belonged to.

16 Q. That's why I'm asking. If you are aware of  
17 any evidence that the marijuana belonged to  
18 Mr. Bester?

19 A. No.

20 Q. And again, to your knowledge, no  
21 fingerprints were taken of --

22 MR. ANDERTON: Asked and answered, Your  
23 Honor.

24 THE COURT: Sustained. Anything else?

25 Q. Y'all found this bag at 1368 5th Place

1 northeast[sic], correct?

2 A. No.

3 Q. You're right, I'm sorry. You found it at --  
4 That's Durrell address, correct?

5 No.

6 You found the bag at Ms. Bester's  
7 apartment, correct?

8 A. Yes.

9 Q. And this was not the apartment -- the  
10 apartment was not where y'all were trying to get a  
11 search warrant?

12 A. That's correct. It was not the place where  
13 we had the search warrant. We already had the  
14 search warrant.

15 Q. Were you there when the search warrant was  
16 executed on Mr. Bester's home, residence?

17 A. No, I couldn't be in two places at the same  
18 time, no.

19 Q. Okay?

20 MR. BENSON: That's all I have.

21 REDIRECT EXAMINATION

22 BY MR. ANDERTON:

23 Q. Was there anybody else in the house at the  
24 time that you made entry with Ms. Bester?

25 A. No.

1 Q. Okay. Thank you.

2 MR. ANDERTON: That's all.

3 MR. BENSON: No questions.

4 THE COURT: Any questions for Sergeant  
5 French? Yes, sir?

6 A JUROR: You said they took two bags  
7 in and you said he brought a bag out. Did  
8 he bring the bag out or what --

9 THE WITNESS: no, I did not say he  
10 brought -- -

11 THE COURT: Okay. Wait, wait, wait.  
12 Wait.

13 We ask a question, then I approve it  
14 before we answer it, okay. You didn't know  
15 that.

16 THE WITNESS: No, I didn't. I'm sorry.

17 THE COURT: Did you understand his  
18 question?

19 THE WITNESS: He said, I said they  
20 brought -- he took two bags in and brought  
21 one bag out.

22 A JUROR: No, I mean to say, the white  
23 guy brought one bag in and he brought one  
24 bag in. I think, didn't you say he took his  
25 bag back out. He brought the bag back out.

1 THE COURT: Okay. That's the question.  
2 Did you say? Did you say that?

3 THE WITNESS: No.

4 THE COURT: Okay, she said no.  
5 Yes, sir?

6 A JUROR: My understanding of that, the  
7 same question. Both Mr. Bester and his  
8 friend were both taking white bags into the  
9 house.

10 THE COURT: Is that correct? Is the  
11 question.

12 A JUROR: Into the apartment, I'm  
13 sorry, not the house.

14 THE COURT: Okay.

15 THE WITNESS: That is correct.

16 THE COURT: Okay.

17 Yes, sir?

18 A JUROR: It seems as though before you  
19 said they were different types of bags. One  
20 was like a Wal-Mart plastic bag and one was  
21 a white garbage bag; is that correct?

22 THE WITNESS: That's correct.

23 A JUROR: Okay. And can I ask one more  
24 then?

25 The white garbage bag, did that look



1           like the white garbage bag that you found in  
2           the apartment?

3           THE COURT:   You can answer --

4           A JUROR:   The white garbage bag that  
5           the white male brought in, did that look  
6           like the white garbage bag that you found at  
7           the apartment that had this Pyrex jar --

8           THE WITNESS:   The white garbage that  
9           the white male carried in was the larger one  
10          that was sitting in the floor.

11          A JUROR:   Right.

12          THE WITNESS:   That had the Pyrex dish  
13          and the other stuff.

14          THE COURT:   Okay.

15          Anyone else?

16                        (No response.)

17          THE COURT:   Any follow-up by the State?

18          MR. ANDERTON:   None, Your Honor.

19          THE COURT:   Any follow-up by the  
20          defense?

21          MR. BENSON:   I would.   Just one  
22          question on the bag.

23                        RECROSS-EXAMINATION

24          BY MR. BENSON:

25          Q.       I thought you testified during my

1 questioning, that the garbage bag that the white  
2 male brought in contained clothes and an  
3 electronic game?

4 A. No, no.

5 The electronic game was by itself. He came  
6 back and got the electronic game.

7 The bag that had the Pyrex, and some tennis  
8 shoes, and some clothing was in it as well. It  
9 didn't just have the Pyrex dish and the scales in  
10 it. It also had tennis shoes and there was some  
11 shirts and stuff in there.

12 In the big garbage bag you're talking about,  
13 in the big white one --

14 Q. Right?

15 A. -- that was sitting in the floor?

16 Q. Right?

17 A. It had other items other than what we  
18 collected.

19 Q. Okay. And, again, there's nothing real  
20 distinctive about this white garbage bag, it would  
21 be like a typical white garbage bag?

22 A. Nothing. It's just like it is in the  
23 picture.

24 Q. Okay.

25 A. It's the same one as in the picture.

1 Q. Okay. And so it's possible it was there  
2 prior to the white male carrying in a white  
3 garbage bag?

4 You don't necessarily know that that's the  
5 same --

6 A. Well, it had his shoes and clothes in it.

7 Q. Okay.

8 A. He was moving -- He was moving, he got put  
9 out or whatever the situation was.

10 So the mom said, "This is what they  
11 brought."

12 Q. Okay.

13 THE COURT: All right. Anything --  
14 Mike go ahead.

15 FURTHER DIRECT EXAMINATION

16 BY MR. ANDERTON:

17 Q. And the mom told you that the bag that  
18 Bester brought in, is the one that he put behind  
19 the stereo, or the radio; is that right?

20 A. She did.

21 Q. She said that?

22 A. She said that.

23 Q. Okay.

24 MR. ANDERTON: Nothing further.

25 MR. BENSON: Nothing further.

1 THE COURT: Yes, sir?

2 A JUROR: It was the bag that was  
3 behind the stereo, the bag that allegedly --  
4 that had the cocaine; can I ask that  
5 question? That cocaine was found in? Or  
6 was it the other bag?

7 THE COURT: You can answer it.

8 THE WITNESS: It was the bag that was  
9 behind the stereo that had the cocaine it  
10 in.

11 THE COURT: Anyone else?

12 (No response.)

13 THE COURT: All right.

14 Anything else for the State?

15 MR. ANDERTON: No, Your Honor.

16 THE COURT: Or the defense?

17 MR. BENSON: No, Your Honor.

18 THE COURT: All right. You're excused.

19 (Witness release.)

20 THE COURT: Ladies and gentlemen,  
21 believe it or not, we are going to break for  
22 lunch.

23 And I want to apologize. I thought we  
24 would be at this point by 12:30, and  
25 evidently it took us a little longer, so I

1 apologize.

2 I need you to be back at 2:15. 2:15,  
3 okay?

4 And remember, not to discuss the case.  
5 Don't go to any address that you have seen  
6 to make an observation, because there's no  
7 guarantee even that it would be in the same  
8 condition as it was last year. And it is  
9 improper. Don't allow anyone to discuss the  
10 case with you.

11 Yes, sir?

12 A JUROR: I just want to get this  
13 clear, I think I understand, but I just want  
14 to make sure.

15 We can't talk about anything that we've  
16 seen amongst ourselves?

17 THE COURT: No, no.

18 A JUROR: We have to wait to deliberate  
19 to do that?

20 THE COURT: Exactly.

21 A JUROR: Okay, just making sure.

22 THE COURT: If you go to lunch  
23 together, don't discuss the case. Talk  
24 about the blow out last night.

25 But don't discuss the case.

1 Any questions?

2 Okay. Y'all familiar with eateries  
3 around here?

4 Very good then.

5 All right. Everybody else remain  
6 seated while the jury leaves out.

7 Have a good lunch.

8 (Break for lunch.)

9 THE COURT: I hope you had a good  
10 lunch, ladies and gentlemen.

11 We are going to pick up and continue  
12 with the State's case. And I'll ask the  
13 State to call their next witness.

14 MR. ANDERTON: The State calls Deputy  
15 Gast. G-A-S-T.

16 DEPUTY AARON GAST,

17 A witness for the State,  
18 Was duly sworn and testified as follows:

19 THE COURT: Have a seat, get  
20 comfortable, scoot you towards the mic,  
21 watch your knees down there.

22 (Witness complies.)

23 DIRECT EXAMINATION

24 BY MR. ANDERTON:

25 Q. Tell us your name, please.

1 A. Deputy Aaron Gast.

2 Q. And Mr. Gast -- Deputy Gast, where do you  
3 work?

4 A. I work for Jefferson County Sheriff's Office,  
5 Vice and Narcotics.

6 Q. What do you for them?

7 A. We mainly work cases that involve people who  
8 are selling drugs.

9 Q. Okay. How long have you been working with  
10 Vice and Narcotics with the Sheriff's Office?

11 A. I started in February of '08.

12 Q. Okay. How long have you been working with  
13 the Sheriff's Office total?

14 A. Let's see five years now.

15 Q. Okay. Back in March, March of '08 did you  
16 have occasion to be working with the Jefferson  
17 County Sheriff's Office, more specifically, March  
18 the 24th, 2008?

19 A. Yes, sir.

20 Q. All right. Do you know Hattie French?

21 A. I do. She's the supervisor in Narcotics.

22 Q. All right. Let me ask you to take a look at  
23 State's Exhibit 14. And ask you if you recognize  
24 that particular package, please.

25 (Witness complies.)

1 A. I do.

2 Q. Okay. And how do you recognize that  
3 particular package?

4 A. I placed the dope in the package and labeled  
5 it for the case agent.

6 Q. All right. What markings on that -- on the  
7 envelope of State's Exhibit 14 are your  
8 handwriting?

9 A. All. All of the handwriting that I see.

10 Q. All right. There is some writing on the  
11 very front with a name, address, and that kind of  
12 thing, is all that your writing?

13 A. That's correct.

14 Q. There is some additional writing on there.  
15 Some numbers here (indicating), some writing down  
16 there (indicating), it's written in red; is that  
17 your handwriting?

18 A. No, sir. I believe they did that at the  
19 State Tox.

20 Q. Okay. Now, when you placed the item -- Did  
21 you receive this item from Hattie French? The  
22 dope, itself?

23 A. I believe so. I mean, I assume that from,  
24 you know, what it says on the package.

25 Q. Okay. You filled out that package; is that



1 right?

2 A. Yes, sir.

3 Q. All right. And that package indicates that  
4 item was collected by Hattie French?

5 A. Correct.

6 Q. All right. And turned over to you?

7 A. Correct.

8 Q. All right. When you placed the dope into  
9 that package, how did you seal up that package?

10 A. I do it the same way every time. We start  
11 off with a blank envelope that's not sealed, and  
12 place contraband inside -- Let me start back, step  
13 back.

14 First I'll fill out the information on the  
15 blank form -- the blank package, then I'll place  
16 the contraband inside, seal it up with evidence  
17 tape. And then I'll initial along the borders of  
18 the evidence tape to insure that it's not  
19 compromised.

20 Q. All right. Then do you maintain the  
21 possession of that particular item?

22 A. No. At that point, it's placed into an  
23 evidence locker until someone takes it to Tox.

24 Q. All right. Do you know Lisa Bartells?

25 A. I do.

1 Q. All right. Does she work in Jefferson  
2 County Sheriff's Vice and Narcotics Unit as well?

3 A. Yes, sir, she does.

4 Q. All right.

5 Now, there's some writing toward the bottom  
6 of that particular envelope on the front, that  
7 indicates an individual that took that item to the  
8 State Department of Forensic Sciences; is that  
9 right?

10 A. That's correct.

11 Q. All right. And who does it say took that  
12 item to the State Department of Forensic Sciences?

13 A. It says from myself to State Tox. I just --  
14 I that's where it was going so I just went ahead  
15 and put State Tox.

16 Q. Okay. Did you in fact carry that item over  
17 to the State Department of Forensic Sciences?

18 A. No, sir.

19 Q. Okay. Who did?

20 A. I'm not sure, I believe Deputy Bartells.

21 Q. Okay.

22 A. Took it.

23 Q. All right. From the time that you collected  
24 that item from Hattie French, out on the scene,  
25 until the time that you sealed it up and turned it

1 into, I think you said an evidence locker --

2 A. Evidence locker.

3 Q. Okay. Was that item in your care, custody  
4 and control the entire time?

5 A. Correct.

6 Q. Okay. Did you make any additions or  
7 deletions to it?

8 A. No, sir.

9 Q. All right. Was it in the same or  
10 substantially the same condition when you turned  
11 it over to or when you put it back into the  
12 evidence locker as it was when you first received  
13 it and sealed it up --

14 A. Yes, sir.

15 Q. -- from Hattie French?

16 A. Yes, sir.

17 Q. All right.

18 MR. ANDERTON: I think that's all the  
19 questions I have from Deputy Gast, Your  
20 Honor.

21 THE COURT: Cross?

22 CROSS-EXAMINATION

23 BY MR. BENSON:

24 Q. Real quick, Deputy. You weren't at the  
25 scene of the alleged crime on this incident?

1 A. We had, if I remember correctly, we had two  
2 different locations. And I was at one location  
3 while Sergeant French and a few other deputies were  
4 at that in particular location. So no I was not at  
5 that particular location.

6 MR. BENSON: That's all I have.

7 THE COURT: All right. Any questions  
8 for Deputy Gast?

9 (No response.)

10 THE COURT: All right. Then you can  
11 step down. You're excused.

12 (Witness is released.)

13 THE COURT: Call your next witness.

14 MR. ANDERTON: Yes sir. The State  
15 calls Lisa Bartells.

16 DEPUTY LISA ANN BARTELLS,

17 A witness for the State,  
18 Was duly sworn and testified as follows:

19 THE COURT: Have a seat, get  
20 comfortable, scoot up towards the  
21 microphone, and watch your knees down there.

22 (Witness complies.)

23 THE COURT: State your full name for  
24 the record, please.

25 THE WITNESS: Lisa Ann Bartells.

DIRECT EXAMINATION

BY MR. ANDERTON:

Q. Ms. Bartells, where do you work?

A. I work for Jefferson County Sheriff's Department, Narcotics Unit.

Q. Okay. And what do you do for them?

A. I'm an investigator. I investigate narcotics cases and complaints.

Q. Okay. How long have you been working with the Narcotics Unit?

A. Since September of '07.

Q. Okay. And how long have you been with the Sheriff's Office total?

A. Since June of 2001.

Q. Ms. Bartells, what are -- Well, let me show you a package.

Let me show you that package. State's Exhibit No. 14. Do you recognize that package at all?

(Witness reviews package.)

A. Yes.

Q. Okay. What is that, please?

A. What's in it or what is the actual --

Q. Well, what is State's Exhibit 14?

A. It's going to be drug evidence that is in an

1 evidence envelope.

2 Q. Okay. And do you recognize the writing on  
3 that envelope?

4 A. Yes, sir.

5 Q. And whose writing would that be?

6 A. It appears to be Aaron Gast's.

7 Q. Okay.

8 A. His first name I think it's Lienell.

9 Q. Okay.

10 A. We call him Aaron.

11 Q. Okay. And that would be the "A" in the  
12 middle of that set of initials; is that right?  
13 "L-A-G"?

14 A. Yes, sir.

15 Q. Okay.

16 Now, Ms. Bartells, pursuant to your duties  
17 working with the Vice/Narcotics Unit, did you  
18 carry that particular item over to the State  
19 Department of Forensics Sciences?

20 A. Yes.

21 Q. All right. And between the -- Where did you  
22 pick that item up from, if you recall?

23 A. I don't recall who gave me the package. We  
24 periodically go to Tox, and just as we're going or  
25 leaving to go over there, we ask everyone if they

1 -- everyone in the unit, if they have anything that  
2 needs to go to Tox. And usually several people  
3 give the individual that's going their evidence.

4 Q. Okay. When you received that item, was it  
5 in a sealed condition?

6 A. Yes, sir.

7 Q. All right. And if someone were to hand you  
8 an item over there in the Vice/Narcotics Unit that  
9 was not in a properly sealed condition, what would  
10 you do?

11 A. I wouldn't take it. I would --

12 Q. Why not?

13 A. I would tell them that they needed to seal it  
14 properly.

15 Q. Why?

16 A. Because that would break the chain of  
17 evidence, obviously. And so that it can show that  
18 it has not been tampered with prior to going over  
19 to the Tox Lab.

20 Q. Okay. And you in fact carried that item  
21 over to the State Department of Forensic Sciences?

22 A. Yes, sir.

23 Q. Do you recall when you did that?

24 A. I don't recall. I did look at the piece of  
25 paper --

1 Q. Okay.

2 A. -- that showed it though. I believe it says  
3 4/14.

4 Q. Okay.

5 A. I don't remember the year that was on there.  
6 I just looked at the date numbers.

7 Q. Okay. All right.

8 Between the time that you collected this  
9 item, to the time you turned it into the State  
10 Department Forensic Sciences, was that item in  
11 your care, custody, and control the entire time?

12 A. Yes, sir.

13 Q. All right. Did you make any additions or  
14 deletions to that item from the time you collected  
15 it -- from the time you collected it, from other  
16 members of the Sheriff's Office and Narcotics  
17 Unit, to the time you turned it into the Tox?

18 A. The only thing I did, and this was once I got  
19 to Tox, this is my writing where it says "Vice."

20 Q. Okay.

21 A. We have to distinguish what we turn in, as  
22 opposed to what patrol turns in or what other  
23 departments -- or other entities of the department.

24 Q. All right. And do you see any differences  
25 on that particular envelope that were not there



1 when you turned it into the State Department of  
2 Forensic Sciences?

3 A. No. I mean, other than what they write on  
4 there, no.

5 Q. Okay.

6 A. In red is what the Department of Forensic  
7 Science, when they -- I don't know what it stands  
8 for or anything. This is what they write on there  
9 (pointing), and that's your little tape that they  
10 put on there.

11 Q. That green sticker on the other side?

12 A. Umm, yellow. Yellow sticker.

13 Q. Okay.

14 A. That's what they put on there at the time I  
15 turn it in.

16 Q. Okay. And you wrote the word "Vice" on it?

17 A. That is all I did to it.

18 Q. Okay. Did you put any other initials or  
19 anything else on it?

20 A. No, sir.

21 Q. Okay. And was it in fact in a sealed  
22 condition when you turned it into the State  
23 Department of Forensic Sciences?

24 A. Yes, sir.

25 Q. All right. Is it the same or substantially

1 the same condition today as it was when you first  
2 turned it into the State Department of Forensic  
3 Sciences, with the exceptions that you've already  
4 told us about?

5 A. Other than the fact that it was opened.

6 Q. When was it opened?

7 A. I don't know. I didn't open it, so I don't  
8 know.

9 Q. But when you turned it in it was in a sealed  
10 condition?

11 A. Yes.

12 Q. Got it.

13 MR. ANDERTON: That's all I've got.

14 THE COURT: Cross?

15 CROSS-EXAMINATION

16 BY MR. BENSON:

17 Q. Couple of quick questions, Deputy Bartells.

18 I'm not sure I understood you. Where did  
19 you say you got that envelope from?

20 A. I don't remember who gave it to me. Not  
21 everyone goes to Tox every single day. We have  
22 lockers in which we store this in, in our office.  
23 Stored with a key.

24 I had some stuff of my own that I was taking  
25 to Tox. And normally when someone goes we offer,

1 "Hey, do you have something that needs to go to  
2 Tox?", to everyone in the Unit that is there at the  
3 time.

4 And I don't recall who gave me this package.  
5 I just know that it was given to me, by someone,  
6 and I took it to Tox.

7 Q. So you didn't actually go to the evidence  
8 locker and retrieve it?

9 A. No, sir.

10 Q. Okay. And one more question. You weren't  
11 at the scene of the alleged crime, correct? As  
12 part of that investigation?

13 A. At this address, that is on this, to where it  
14 was collected. No, I was not.

15 Q. All right.

16 MR. BENSON: That's all I have.

17 MR. ANDERTON: Nothing.

18 THE COURT: Any questions for Deputy  
19 Bartells?

20 (No response.)

21 THE COURT: All right. You may stand  
22 down.

23 THE WITNESS: Thank you, sir.

24 (Witness is released.)

25 THE COURT: State, call your next

1 witness.

2 MR. ANDERTON: State calls Shari  
3 Kelley.

4 SHARI KELLEY,

5 A witness for the State,  
6 Was duly sworn and testified as follows:

7 THE COURT: Have a seat, get  
8 comfortable, scoot up towards the  
9 microphone, watch your knees down at the  
10 bottom.

11 (Witness complies.)

12 THE COURT: Would you state your name  
13 for the record, please?

14 THE WITNESS: Shari Kelley.

15 DIRECT EXAMINATION

16 BY MR. ANDERTON:

17 Q. Ms. Kelley, for purposes of the court  
18 reporter would you spell your first and last name,  
19 please?

20 A. S-H-A-R-I. K-E-L-L-E-Y.

21 Q. Ms. Kelley, where do you work?

22 A. With the Alabama Department of Forensic  
23 Sciences.

24 Q. What do you do for them?

25 A. I am a Lab Tech.

1 Q. And what does a Lab Tech do?

2 A. Right now, I currently work in the forensic  
3 biology section. But at the time of this case, I  
4 was an evidence technician.

5 Q. All right. And as an evidence technician  
6 for the State Department of Forensic Sciences,  
7 what do you do?

8 A. You're the custodian of all evidence that  
9 enters the lab.

10 Q. Right. And do you receive evidence that  
11 comes into that lab?

12 A. Yes, I do.

13 Q. Okay. Now, let me direct your attention to  
14 April the 14th, 2008 and ask you if you received  
15 any evidence from the Jefferson County Sheriff's  
16 Office concerning one suspect by the name of  
17 Durrell Bester.

18 A. I did.

19 Q. All right. What if anything did you  
20 receive?

21 A. One manilla envelope.

22 Q. All right.

23 Let me show you what has been marked  
24 State's Exhibit 14. And ask you if you can  
25 identify that please.

1 (Witness reviews exhibit.)

2 A. Yes, I can.

3 Q. What is that?

4 A. It's the manilla envelope that I received on  
5 April 14th, 2008.

6 Q. Who did you receive that from, please?

7 A. I actually received out of our intake locker.  
8 Which was put in there by Deputy L.A. Bartells.

9 Q. Tell us how that intake locker works.

10 A. The officer will come in, the item of  
11 evidence is given a computer generated lab number.  
12 And then it is locked in a secure evidence locker  
13 by the officer.

14 Q. Okay. So you don't necessarily receive it  
15 in a hand-to-hand exchange?

16 A. No, I do not.

17 Q. Okay. But according to the paper work Lisa  
18 Bartells left that at the State Department of  
19 Forensic Sciences in a sealed locker; is that  
20 correct?

21 A. Correct.

22 Q. All right. What if anything did you do with  
23 that item once you received it?

24 A. When I received it out of the locker, I then  
25 locked it in our secure evidence vault.

1 Q. Okay. And at some point did you turn it  
2 over to anyone else?

3 A. I did. I retrieved it out of the evidence  
4 vault on May 19th of 2008 to give to the scientist.

5 Q. Okay. Now, who has a key to this secure  
6 vault?

7 A. It would be the evidence technicians and the  
8 laboratory director and assistant laboratory  
9 director.

10 Q. Okay. And you were one of the evidence  
11 technicians at the time?

12 A. Correct.

13 Q. All right. When you received State's  
14 Exhibit 14 was it in fact in a sealed condition?

15 A. Yes, it was.

16 Q. All right. And did you at that time place  
17 any marks on it?

18 A. Yes, I did.

19 Q. What marks did you place on it?

20 A. Our computer generated lab number.

21 Q. Okay. And is that handwritten number or is  
22 that the little sticker thing --

23 A. It is going to be the yellow barcode.

24 Q. The yellow barcode, okay.

25 A. Uh-huh.

1 Q. But you didn't put any handwritten things on  
2 that?

3 A. No, I did not.

4 Q. Okay. So the red handwriting on there is  
5 from someone else?

6 A. Correct.

7 Q. Okay.

8 Once you place this barcode on it, what do  
9 you do with it?

10 A. It's then put in the locker by the officer.

11 Q. Okay. All right. So the officer gets the  
12 barcode, puts it on it and then it's locked in the  
13 locker.

14 A. Well, the evidence tech will label the  
15 envelope, and then it is placed in the locker by  
16 the officer.

17 Q. Okay. So I guess, what I'm getting at is  
18 State's Exhibit 14, the officer would have come  
19 in, somebody would have received it?

20 A. Uh-huh.

21 Q. And put the barcode thing on it. And then  
22 the officer would have put it in a locker?

23 A. Correct.

24 Q. Okay. And at some point later, you retrieve  
25 that item out of the locker, and secured it in the



1 vault?

2 A. Correct.

3 Q. Okay. And then some time after that, you  
4 retrieved it out of the vault and turned it over  
5 to the scientists?

6 A. Correct.

7 Q. All right. Between the time that you first  
8 receive that item on the 14th of April, 2008 to  
9 the time that you pulled it out of the vault, on I  
10 believe that's May the 19th?

11 A. Uh-huh.

12 Q. Is that correct?

13 A. That is correct.

14 Q. Did you make any additions or deletions to  
15 that item?

16 A. I did not.

17 Q. Okay.

18 And was it in the same condition when you  
19 turned it over to the scientists on May 19th as it  
20 was when you first collected it on April the 14th?

21 A. Yes, it was.

22 Q. All right. Did there appear to be any  
23 additions or deletions to that item from when you  
24 turned it into the scientists on May 19th from the  
25 time that you had first collected it on April the

1 14th?

2 A. No.

3 Q. Okay. And that whole time when you turned  
4 it over to the scientists, was it in a sealed  
5 condition?

6 A. Yes.

7 Q. When you first received it, was it in a  
8 sealed condition?

9 A. Yes.

10 Q. And was that item in the care, custody and  
11 control of the Alabama State Department of  
12 Forensic Scientists from the time it was first  
13 turned in by the detective on the 14th, to the  
14 time that it was turned over to the scientists?

15 A. Yes.

16 Q. Okay. Did you perform any analysis on the  
17 envelope, State's Exhibit 14 or its contents?

18 A. No, I did not.

19 Q. Okay. You didn't have anything to do with  
20 doing that, you just kind of making sure it's  
21 secure, and then making sure it gets to where it  
22 needs to go?

23 A. That's correct.

24 Q. All right.

25 Ms. Kelley, that's all I've got.

1 MR. ANDERTON: Thank you.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MR. BENSON:

5 Q. Do you recall, or to the best of your  
6 knowledge, recall any other evidence, other than  
7 this bag we've been talking about, coming into the  
8 Department on Forensic Sciences, regarding this  
9 case?

10 A. No, I do not.

11 Q. If there were going to be fingerprint  
12 evidence taken, or tested, or other type of  
13 forensic, would it come to the Alabama Department  
14 of Forensic Sciences?

15 A. Not for fingerprints, no.

16 Q. Okay.

17 MR. BENSON: That's all I have.

18 MR. ANDERTON: I have nothing further.

19 THE COURT: Any questions for Ms.  
20 Kelley?

21 (No response.)

22 THE COURT: All right, then, you're  
23 excused, Ms. Kelley.

24 THE WITNESS: Thank you.

25 (Witness is released.)

1 THE COURT: State, call your next  
2 witness.

3 MR. ANDERTON: State calls Sherry  
4 Steel.

5 SHERRY STEEL,

6 A witness for the State,  
7 Was duly sworn and testified as follows:

8 THE COURT: Have a seat, get  
9 comfortable, scoot up towards the  
10 microphone. Watch your knees down there.

11 (Witness complies.)

12 THE COURT: Would you state your name  
13 for the record, please?

14 THE WITNESS: Sherry Steel.

15 DIRECT EXAMINATION

16 BY MR. ANDERTON:

17 Q. Ms. Steel, where do you work?

18 A. I work for the Alabama Department of Forensic  
19 Sciences. And I work in the Birmingham Hoover  
20 laboratory.

21 Q. What do you do for the Alabama Department of  
22 Forensic Sciences, Ms. Steel?

23 A. My duties there at the Department of Forensic  
24 Sciences are to analyze any types of powders, plant  
25 materials, we look at pharmaceutical tablets, and I

1 look at any liquids. And what I do is I identify  
2 any presence of any controlled substance.

3 Q. All right. What is your job title, I guess?

4 A. My job title there is Forensic Scientist.

5 Q. Okay. And Ms. Steal, can you tell us what  
6 your education, training or background is that  
7 qualifies you to be a forensic scientist?

8 A. I received my Bachelor of Science degree in  
9 the area of forensic sciences from the University  
10 of Alabama at Birmingham. And once completing my  
11 degree, and being employed with the Department of  
12 Forensic Sciences, I underwent a 16 month training  
13 program with them.

14 After that program was completed I was sent  
15 to D.A. school in Virginia to do some additional  
16 training.

17 And our department requires 20 hours of  
18 continuing education training each year.

19 Q. All right. How long have you been working  
20 for the Alabama Department of Forensic Sciences?

21 A. I've been there 19 years.

22 MR. ANDERTON: Your Honor, at this time  
23 I would like to offer Ms. Steal as an expert  
24 in the area of forensic sciences.

25 MR. BENSON: No objection.

1 THE COURT: She's in.

2 Q. Ms. Steel, did you have occasion on May the  
3 19th, 2008 to receive some evidence in a case  
4 against a subject by the name of Durrell Bester?

5 A. Yes, I did.

6 Q. What if anything did you receive?

7 A. On the 19th of May, I received a manilla  
8 envelope from our evidence technician.

9 Q. Is that Shari Kelley?

10 A. Yes, that is.

11 Q. All right. And let me get you to take a  
12 look at State's Exhibit 14. And ask you to take a  
13 look at that, and see if you recognize State's 14.

14 (Witness complies.)

15 A. Yes, I do.

16 Q. What is State's 14?

17 A. State's 14 is the envelope which received  
18 from our evidence technician. Which contains an  
19 identifier that we place on here when we take in  
20 evidence at our lab.

21 Q. All right. Now, when you received the item  
22 in State's 14, what if anything -- first of all,  
23 was it in a sealed condition?

24 A. Yes, it was.

25 Q. All right. And when you first received the

1 envelope marked State's 14, what if anything did  
2 you do with that envelope?

3 A. When I received the envelope and take it into  
4 my possession or custody, I place my initials on  
5 the identifier that we place on here, when I  
6 receive it. And I also place the case number and  
7 my initials and item number on the backside of the  
8 envelope.

9 Q. Why do you do that?

10 A. I do that so I will recognize it, and it's  
11 part of our standard operating procedures that we  
12 make a some type of identifier on it, that's  
13 personal and known to us, that that evidence has  
14 been in our custody.

15 Q. All right. Now, Ms. Steel, did you in fact  
16 open the envelope marked State's 14?

17 A. Yes, I did open it.

18 Q. All right. And when you opened it, what if  
19 anything did you find?

20 A. When I opened the envelope, I found a plastic  
21 bag -- actually two different plastic bags. In  
22 each plastic bag that I opened they contained some  
23 powders and compressed material.

24 Q. All right. You say plastic bags, what type  
25 of plastic bags were they?

1 A. On the Item A I wrote down that this was a  
2 zip-lock bag.

3 Q. Okay.

4 A. And what I did because they were in separate  
5 bags, I did sub-itemize them. I have an Item A and  
6 an Item B, and it was also a plastic zip-lock bag.

7 Q. Okay. Similar to like sandwich bags?

8 A. Yes, sir.

9 Q. Okay. Did you perform any examination or  
10 tests on the contents of this powder and this  
11 compressed material, A and B?

12 A. Yes, sir, I did.

13 Q. What, if any kind of tests, did you perform?

14 A. On Items A and B, I performed - and this is  
15 on each one of the items - the crystal test on both  
16 items. And also some of the individual particles  
17 within each bag of the compressed material and the  
18 powder. And the crystal test is where I actually  
19 just look at presence of any type of crystal  
20 formation when I add a chemical to that actual  
21 powder, and that compressed material.

22 After that was done, I take samples from  
23 each bag. And I expose it two other tests. And  
24 one of them is an infared spectrometer. And that  
25 test we'll actually be placing some of our raw



1 sample on there. It's not extracted or nothing is  
2 done to it chemically. But I look at the exact  
3 sample, and it will give me the chemical make-up or  
4 formal of what the material contains.

5 The next thing I did was a test that we run  
6 on the gas chromatographer. And that test allows  
7 me to actually see a break down of the chemical as  
8 it comes on the instrument where it is introduced  
9 as a gas. So it is broken down and it actually  
10 will pull fragments out of the sample, and again  
11 give us a print out of what is inside that  
12 material.

13 Q. Now, you mentioned that you performed each  
14 one of these tests, at any point during your  
15 examination do you weigh the material?

16 A. Yes, sir, I did.

17 Q. When do you weigh that material in the  
18 process?

19 A. I take a weight of my material when I first  
20 take it out of the envelope, before I do any type  
21 of testing on it.

22 Q. Okay. And why is that?

23 A. That's just part of our standard procedure,  
24 too. That we just always take a weight of our  
25 material before we take anything from it, so we

1 will get an actual weight of what it weighed when  
2 it came into the laboratory.

3 Q. Okay. And do you weight it -- would you  
4 have weighed this in each one of these separate  
5 plastic bags? Or would you have removed those  
6 items from the bags themselves?

7 A. I remove the items from the bag.

8 Q. Okay. And that's just to ensure that the  
9 weight of the bag itself is not included; is that  
10 right?

11 A. Yes, sir, that's correct.

12 Q. Now, you mentioned that you do -- and Ms.  
13 Steel, I'm going to mess this up, I know -- You do  
14 some kind of chemical test with it, all right, on  
15 the -- the crystal test?

16 A. (Nodding head affirmatively.)

17 Q. All right. In the performance of the  
18 crystal test, you said you tested - for lack of a  
19 better term, for reference purposes - bag A and  
20 bag B of materials; is that right?

21 A. Yes, sir.

22 Q. Okay. The crystal test, does that in fact  
23 destroy some of the material that you use for the  
24 purposes of your examination?

25 A. That particular test does, yes.

1 Q. Okay. How much does it take -- I mean, how  
2 much does it destroy?

3 A. Very little of that material. I take  
4 probably, a pen drop, maybe.

5 Q. Okay.

6 A. Of my substances. A very small amount of  
7 material that I need to actually do my crystal  
8 test.

9 Q. Okay. And you did that on the contents of  
10 Bag A and the contents of Bag B?

11 A. Yes, that's correct.

12 Q. Okay. And what if anything were the results  
13 of the crystal test on the contents of Bag A?

14 A. My results were positive for the presence of  
15 cocaine on Bag A.

16 Q. And Bag B?

17 A. My results were also positive for the  
18 presence of cocaine.

19 Q. Now, you mentioned then that you did a  
20 spectrometry test; is that right?

21 A. Yes, I did. What we call --

22 Q. Infrared?

23 A. -- infrared, yes.

24 Q. Okay. And does the infrared spectrometry  
25 test destroy any of the material?

1 A. No, it does not.

2 Q. Okay. What were the -- How does that work?  
3 How does that infrared light actually tell you  
4 anything?

5 A. What it does is the molecule, or the chemical  
6 that we're looking at, it will take that light as  
7 it hits that chemical, and it will actually give us  
8 a print out of a read-out based on how that  
9 chemical is made up or the structure of that  
10 chemical.

11 So it makes it more like a fingerprint  
12 identifier of that chemical. Because of the way it  
13 does -- the way the light handles the bonds and the  
14 make-up of the particular substance, that it's  
15 identifying as it scans it on the instrument.

16 We place it on there and we allow it to scan  
17 that instrument -- or on the instrument it will  
18 scan a sample, and that sample will react certain  
19 ways based on how that chemical is bonded.

20 And then it will give us like a picture of  
21 that particular chemical.

22 Q. Okay. But -- and that particular test  
23 doesn't destroy any of the material?

24 A. No, it does not.

25 Q. But it does give you some type of a result;

1 is that right?

2 A. Yes, it does.

3 Q. What was the result of the infrared  
4 spectrometry?

5 A. Again, that the substance did contain  
6 cocaine.

7 Q. Okay. Finally, you mentioned a gas  
8 chromatograph?

9 A. Yes, sir.

10 Q. Is that right?

11 A. Yes.

12 Q. What is that test, I mean, how does that  
13 test work?

14 A. The gas chromatography or gas chromatograph  
15 is the instrument, the chromatography is what we  
16 look at as that particular material is introduced  
17 into the machine. It's heated, but it's introduced  
18 in there as a gas.

19 So what we do, is we place the sample and  
20 the liquid where it dissolves in, and it's allowed  
21 to go through the machine it's injected in.

22 And what it does is, it vaporizes and goes  
23 in as a gas. And once it goes in, it has a  
24 particular point where it comes out on the  
25 instrument that lets you know what that chemical

1 was. And it's based on standards that we have,  
2 recognized standards that we go by to identify our  
3 substances with.

4       Once it passes through the gas chromatograph  
5 it goes through a mass spectrophotometer. And that  
6 particular instrument will fragment that sample,  
7 and give us a pattern, and then based on the  
8 temperature in which it comes out of the machine  
9 and actually the size of the sample, and how it's  
10 chemically bonded and made up, based on those  
11 particular things. Those things will give us a  
12 specific identifier based on the library of  
13 standards that we have, that will actually identify  
14 that sample.

15 Q.       Okay. And what was the result from the gas  
16 chromatography?

17 A.       That that particular substance did contain  
18 cocaine.

19 Q.       All right. Did you perform any other  
20 examinations on this material that was given to  
21 you.

22 A.       No, I did not.

23 Q.       Okay. Did you do the gas chromatography on  
24 both Bag A and Bag B?

25 A.       Yes, sir, I did.

1 Q. Okay. And did both samples indicate the  
2 presence of cocaine?

3 A. Yes, sir, it did.

4 Q. Both samples indicated the presence of  
5 cocaine, with the infrared spectometry as well; is  
6 that correct?

7 A. Yes, sir

8 Q. Okay. And the same thing with the crystal  
9 test?

10 A. Yes, sir.

11 Q. Okay. So did you do any more tests, besides  
12 those three tests?

13 A. No, sir.

14 Q. Okay. Ms. Steel, based on your training,  
15 education and background, based on your  
16 examination of the material presented to you in  
17 this particular cause; have you had a chance to  
18 form an opinion as to what the material is that  
19 was presented to you in this particular case,  
20 against Durrell Bester?

21 A. Yes, sir, I did.

22 Q. What is that opinion, please?

23 A. That the material did contain cocaine.

24 Q. All right.

25 You indicated that you in fact weighed each

1 one of those bags; is that right?

2 A. Yes, sir, that's correct.

3 Q. All right. Can you tell us the weight of  
4 bag -- what you call Bag A?

5 A. Bag A weighed 43.5 grams.

6 Q. Okay. What about Bag B?

7 (Writing on board.)

8 A. Bag B weighed 26.1 grams.

9 Q. Did you in fact add those two weights  
10 together to come up with a total weight?

11 A. Yes, sir, I did.

12 Q. What did you come up with, please?

13 A. 69.6 grams.

14 Q. Are you familiar with the term "crack  
15 cocaine"?

16 A. Yes, sir, I am.

17 Q. What is crack cocaine?

18 A. Crack cocaine is another form of cocaine.

19 Cocaine is mixed in two forms, either crack cocaine  
20 or cocaine base, or cocaine hydrochloride. Once  
21 you have crack cocaine it's usually made or formed  
22 from cocaine hydrochloride.

23 This is two different forms of cocaine, one  
24 form is smokable, and one is injectable.

25 Q. Okay. Was crack cocaine involved in either



1 Bag A or Bag B?

2 (Witness reviews documents.)

3 A. Cocaine based or known as "crack cocaine" was  
4 involved in Item 1-B, or Bag B.

5 Q. What about Bag A, what was it?

6 A. Bag A was cocaine-hydrochloride.

7 Q. And is was that the powder form?

8 A. That is the powder form.

9 Q. All right.

10 Were those the only items you were asked to  
11 identify or analyze in this particular case?

12 A. Yes, sir, it was.

13 Q. Okay. Thank you, Ms. Steel.

14 MR. ANDERTON: That's all the questions

15 --

16 THE COURT: Cross?

17 CROSS-EXAMINATION

18 BY MR. BENSON:

19 Q. Ms. Steel, just real quick. You simply  
20 tested the cocaine that was sent -- that you  
21 gathered from -- that Ms. Kelley brought to you,  
22 correct?

23 A. That is correct.

24 Q. You didn't have anything to do with the  
25 investigation?

1 A. No, sir, I did not.

2 MR. BENSON: That's all I have.

3 THE COURT: All right. Any questions  
4 for, Ms. Steel?

5 (No response.)

6 THE COURT: Very good then. You are  
7 excused --

8 MR. ANDERTON: I'm sorry.

9 REDIRECT EXAMINATION

10 BY MR. ANDERTON:

11 Q. From the time you received the cocaine, to  
12 the time you finished your test, and turned it  
13 back into the Jefferson County Sheriff's  
14 Department, was that item in your care, custody,  
15 and control the entire time?

16 A. It was in my custody, care, and control until  
17 I returned it to Ms. Kelley. And she does the  
18 returning to the Jefferson County Sheriff's  
19 Department.

20 Q. Okay. And you didn't make any additions or  
21 deletions to those items, Bag A or Bag B, with the  
22 exception of whatever you needed to do in order to  
23 perform your examinations; is that correct?

24 A. Yes, sir. That's correct.

25 Q. All right. It was in the same or

1 substantially the same condition when you turned  
2 it into Ms. Kelly, and you had finished all of  
3 your examinations, as it was when you first  
4 received it, with the exception of whatever you  
5 needed to do to perform your examination?

6 A. Yes, that is correct.

7 Q. All right?

8 MR. ANDERTON: State would move to  
9 introduce State's Exhibit 14, at this time.

10 MR. BENSON: No objection.

11 THE COURT: 14 is in.

12 (Whereupon, State's Exhibit Number  
13 14 was received into evidence.)

14 THE COURT: Anything else?

15 MR. ANDERTON: No, sir.

16 THE COURT: All right. You're excused.

17 (Witness is released.)

18 MR. ANDERTON: Judge at this time, the  
19 State also move to introduce photographs  
20 number 1 and number 10.

21 THE COURT: Let me see 1.

22 MR. ANDERTON: Yes, sir.

23 (Whereupon, the Court reviews the  
24 exhibit.)

25 THE COURT: Okay. 1 is in.

1 (Whereupon, State's Exhibit Number  
2 1 was received into evidence.)

3 MR. ANDERTON: All right.

4 State would move to introduce 12 and  
5 13.

6 THE COURT: All right, 12 is in. And 1  
7 through 15 are in.

8 (Whereupon, State's Exhibit  
9 Numbers 12 and 13 were received  
10 into evidence.)

11 MR. BENSON: Judge, could we revisit  
12 14, I spoke to soon on stating no objection  
13 on 14.

14 THE COURT: I'll hear you.

15 (Off the record side bar.)

16 THE COURT: Overruled.

17 What says the State?

18 MR. ANDERTON: Your Honor, may I have  
19 just one moment?

20 THE COURT: Sure.

21 (Off the record.)

22 MR. ANDERTON: State of Alabama would  
23 rest.

24 THE COURT: All right. Ladies and  
25 gentlemen, allow me take up a legal matter

1 with the lawyers. And don't discuss the  
2 case. And I'll get back with y'all as soon  
3 as possible and we'll continue, okay. We're  
4 moving right along.

5 (Whereupon, the jury leaves the  
6 courtroom.)

7 THE COURT: Go ahead, Billy.

8 MR. BENSON: Judge, at this time, I  
9 want to renew on the record my objection to  
10 the admission of State's Exhibit 14. My  
11 recollection of the testimony was that  
12 Deputy Gast, was that he placed the envelope  
13 into an evidence locker and did not have any  
14 further dealings with that evidence. And  
15 then Deputy Bartells testified that she did  
16 retrieve it from an evidence locker, but was  
17 given the evidence.

18 So I would move to suppress that  
19 evidence on the basis of a break in the  
20 chain of custody.

21 THE COURT: Response?

22 MR. ANDERTON: Judge, I would submit to  
23 the Court that even if, even if the way  
24 Mr. Benson recalls the testimony, is an  
25 accurate representation, I would submit to

1 the Court that perhaps that weakens the  
2 chain of custody on this case, but it does  
3 not break the chain.

4 And of course, the Court is fully aware  
5 that a break in the chain of custody, and  
6 even a weak link in the chain of custody,  
7 does not make a piece of evidence  
8 inadmissible, rather it goes to its  
9 credibility that the jury -- the jury can  
10 give it whatever credibility it wants to.  
11 And use it for whatever strength of evidence  
12 that it may. And so I would submit to the  
13 Court that State's Exhibit 14 was properly  
14 admitted.

15 THE COURT: All right. 14 is in.  
16 Motion denied.

17 MR. BENSON: Judge, at this time, I  
18 would on behalf of my client make a motion  
19 for judgement of acquittal.

20 The State has failed to reach its  
21 burden in this case. They have not proved  
22 the actual or constructive possession. And  
23 that's the main element of this crime.  
24 Which the State has failed to prove that.

25 THE COURT: All right. Motion will be

1 denied at this time.

2 Would you like a moment or two to --

3 MR. BENSON: Yes, sir.

4 MR. ANDERTON: May I mention something  
5 before we do that?

6 THE COURT: Sure.

7 MR. ANDERTON: If Mr. Benson is going  
8 to present evidence, as he seemed to  
9 indicate, and obviously it's up to him and  
10 his strategy and change as he sees it fit.

11 If he is going to present evidence of  
12 Ms. Dorothy Bester that she did not say some  
13 of the things that have been testified to,  
14 or that she did not make the statement to  
15 the police that she said those things.

16 Then I would suggest to the Court, or I  
17 would move that we find counsel to represent  
18 her. It would certainly be a reasonable  
19 inference, Your Honor, that if Ms. Bester  
20 comes in here and says my son did not put  
21 that cocaine there, and I never told the  
22 police that. It would in fact -- could be  
23 attributed to Ms. Bester herself.

24 So I would, if Ms. Bester is going  
25 testify in that manner.

1 I would ask the Court that she be  
2 provided counsel so that she could be  
3 properly advised as to the right not to  
4 incriminate herself.

5 MR. BENSON: If I may, Your Honor?

6 THE COURT: Response?

7 MR. BENSON: Should I put Ms. Bester on  
8 the stand, there will be additional  
9 testimony of other individuals, not just  
10 herself, and Durrell and the white male,  
11 having been in that apartment.

12 THE COURT: All right. Well, let's see  
13 where we go. And if I see it is necessary  
14 I'll consider that.

15 MR. ANDERTON: Yes, sir.

16 (Break)

17 (Jury back)

18 THE COURT: All right. Let the record  
19 reflect the Defendant is present, all  
20 counsel are present.

21 Ladies and gentlemen, the State has  
22 rested their case. So now we turn to the  
23 defense and we ask the defense to call their  
24 first witness.

25 MR. BENSON: The defense calls Dorothy



1 Bester.

2 DOROTHY BESTER,

3 A witness for the defense,

4 Was duly sworn and testified as follows:

5 THE COURT: Have a seat. Get

6 comfortable, do watch your knees down there.

7 (Witness complies.)

8 THE COURT: Go ahead.

9 DIRECT EXAMINATION

10 BY MR. BENSON:

11 Q. Good afternoon, Ms. Bester.

12 For the record, would you go ahead and  
13 state your full name, please, and spell it?

14 A. Dorothy Conwell Bester. D-O-R-O-T-H-Y.  
15 C-O-N-W-E-L-L. B-E-S-T-E-R.

16 Q. Ms. Bester, you know Durrell, correct?

17 A. Right.

18 Q. How do you know Durrell?

19 A. That's my son.

20 Q. That's your son. And you just took an oath,  
21 correct?

22 A. (Nodding head affirmatively.)

23 Q. Just because it's your son sitting here, you  
24 wouldn't lie, would you?

25 A. No, I wouldn't.

1 Q. Okay. You know why we're here. Your son  
2 has been charged with a crime, specifically,  
3 trafficking in cocaine. That they found allegedly  
4 at your apartment.

5 A. Yes.

6 Q. Okay.

7 And that happened on March 24th, 2008 do  
8 you recall that day?

9 A. Yes.

10 Q. Okay. Before we get into that, I know  
11 you're nervous. You don't do this -- this isn't  
12 part of your daily routine or job, you know, I  
13 understand your nervous.

14 A. Yeah.

15 Q. Nobody's gonna bite you.

16 A. Yeah.

17 Q. If he tries I'll tackle him, and we'll stop  
18 him.

19 A. Okay.

20 Q. In fact, you suffer from a nervous  
21 condition, correct?

22 A. Yes, I do.

23 Q. You take medication --

24 THE COURT: What are you doing?

25 MR. BENSON: I was --

1 THE COURT: Ask questions.

2 MR. BENSON: Okay.

3 Q. The medication you take does not affect your  
4 ability to testify --

5 THE COURT: Come over here. Both of  
6 y'all.

7 A. No.

8 (Whereupon, a side bar was heard  
9 off the record.)

10 THE COURT: Go ahead.

11 Q. All right. Excuse me, Ms. Bester. Why  
12 don't you go ahead tell me what happened, what you  
13 remember about that day?

14 A. My son, he had gotten into it with his  
15 girlfriend. And he brought his clothes over to the  
16 house. And so the white guy, he came in too, and  
17 brought a bag, and took it into the back. And put  
18 it in the hamper. In the back of my bedroom. So  
19 Durrell, he was toting his clothes in and I went  
20 out there helping him tote his clothes in.

21 And later on, I went to the store. And I  
22 was trying to get on out of the house and go on and  
23 do what I had to do. And I went on to the store.  
24 When I came back from the store, a lot of people  
25 was standing out there in front of my door. And

1 they started asking me questions, what my name was,  
2 and everything, so I told them my name.

3 And I when I opened the door, they started  
4 coming on in behind me. And they told me, say,  
5 give me the bag. Said, I seen him bring the bag  
6 in.

7 And I, told them that Durrell was bringing  
8 some clothes in, and the white guy he brought a bag  
9 and put in the hamper in the room in the back. So  
10 I give them the bag. And I went on in there and  
11 gave them the bag that was in my bedroom. I looked  
12 in the hamper and got the bag.

13 And I followed him because he was taking the  
14 a bag in my room and I followed him in there, and  
15 seen him put the bag in the hamper.

16 (Brief pause.)

17 A. And later on --

18 THE COURT: Wait until he asks you a  
19 question.

20 Q. Okay. I'm going to show you what's been  
21 marked as State's Exhibit 15. That's your  
22 signature, right?

23 A. Uh-huh.

24 Q. Okay. Do you remember this document?

25 A. I remember they telling me to sign something.

1 But they didn't tell me why.

2 Q. Okay.

3 A. I had signed it, but they didn't read it to  
4 me.

5 Q. Okay.

6 A. I didn't really know what I was signing,  
7 because I was real nervous and everything. I  
8 couldn't really, you know, speak, and say what I  
9 wanted to say.

10 Q. Okay.

11 So when you signed this you didn't know  
12 what you were signing?

13 A. No, I didn't.

14 Q. Nobody explained to you what you were  
15 signing?

16 A. No, they didn't.

17 Q. When did you sign it?

18 A. The same day when they came in there.

19 Q. Okay. Was this before or after --

20 A. That was after they had start searching.

21 Q. Okay.

22 Ms. Bester do you live -- What's your  
23 address?

24 A. 1049 Huffman Road Apartment K.

25 Q. Apartment -- all right. On the day of March

1 24th, 2008 is that the same address you have now?

2 A. No, that's a different.

3 Q. Okay. That was Apartment E?

4 A. Apartment E, yeah.

5 Q. Okay. Did you live there by yourself?

6 A. No. Me and my niece, and her boyfriend.

7 Q. Okay. So there are two other people that  
8 lived there. Did you ever have visitors come to  
9 the apartment?

10 A. Sometimes I had visitors, yeah.

11 Q. Okay. Did your niece and her boyfriend ever  
12 have visitors come to the apartment?

13 A. Yes.

14 Q. Okay. In fact, were their times you weren't  
15 there --

16 MR. ANDERTON: Objection. Leading.

17 A. Yes.

18 THE COURT: Sustained.

19 Don't answer if he objects, until I  
20 rule, please.

21 THE WITNESS: Okay.

22 THE COURT: Objection sustained.

23 Disregard the last answer please.

24 MR. BENSON: That's all I have, Your  
25 Honor.

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MR. ANDERTON:

4 Q. Ms. Bester, you took the sheriff's office  
5 into that room, didn't you?

6 A. Yes. And give them the bag.

7 Q. All right. Hold on.

8 All right. And I think you indicated that  
9 was your signature, right there (indicating)?

10 A. Yes, it is.

11 Q. Okay. And a couple of other people  
12 witnessed you, saw you sign it, and they signed  
13 right below; is that right?

14 A. That's right.

15 Q. And you heard the testimony from Sergeant  
16 Hattie French --

17 MR. BENSON: Your Honor, she hadn't  
18 heard the testimony.

19 MR. ANDERTON: Oh, I'm sorry. All  
20 right.

21 THE COURT: Objection sustained.

22 MR. ANDERTON: Let me rephrase, Your  
23 Honor.

24 Q. If a deputy sheriff came in and testified  
25 that she read this form to you; would she be

1 incorrect?

2 A. She was incorrect.

3 Q. Okay --

4 A. -- because they told me --

5 Q. Now, she testified that -- if she came in  
6 and testified that you took them into that room,  
7 she would be correct, there, correct?

8 A. Yeah, I took them to the room.

9 Q. Okay. And if she testified that in fact you  
10 signed that form, she would be correct there?

11 A. Yeah, I signed it.

12 Q. Is that right? Okay.

13 And if there was additional testimony that  
14 you told the sheriff's office that your son came  
15 in and put a bag behind the box; would that be  
16 correct?

17 A. I didn't say he put it back there.

18 Q. You didn't say that?

19 A. Huh-uh.

20 Q. Are you familiar with the area where they  
21 found the bag that had the cocaine in it?

22 A. Yes, I am.

23 Q. Okay.

24 Let me show you State's Exhibit No. 3,  
25 right there. All right. And that would be in



1 that room, correct?

2 A. Right.

3 Q. That's where they found the cocaine?

4 A. Yes.

5 Q. Behind that stereo or boom box or whatever  
6 it's called?

7 A. Yes.

8 Q. Okay. And that's just another picture of  
9 that same corner; is that right?

10 A. Right.

11 Q. And that's the farthest wall from when you  
12 walk in; is that right?

13 A. Yeah.

14 Q. Okay. So that would be kind of the back  
15 wall?

16 A. Uh-huh.

17 Q. Okay. And that's in fact that's a picture  
18 of you that night; is it not?

19 A. Yeah --

20 Q. Or that day, excuse me.

21 All right. And then if you look behind  
22 that boom box from the top, you can see the bag,  
23 can't you?

24 A. Right.

25 Q. Okay. And that's the bag that the cocaine

1 was found in?

2 A. Yes.

3 Q. Is that right?

4 Okay. And that's in a room that Durrell  
5 had some of his clothes in; is that right?

6 A. Yeah.

7 Q. Okay.

8 A. The clothes that we toted in the house.

9 Q. Okay.

10 THE COURT: I'm sorry. Clothes that we  
11 what?

12 THE WITNESS: Carried in the house.

13 THE COURT: Clothes that we carried in  
14 the house?

15 THE WITNESS: Yes, I said I helped him  
16 brought some of his clothes in.

17 THE COURT: Okay.

18 Q. Did you see a white garbage bag, that the  
19 white male brought into the house?

20 A. Yes.

21 Q. Okay. And that -- Let me show you State's  
22 No. 8. Right there (indicating), that's a white  
23 garbage bag, and that's right there in Durrell's  
24 room?

25 A. That's my room.

1 Q. I'm sorry?

2 A. That's my room.

3 Q. That's your room?

4 A. Uh-huh. Durrell didn't stay with me.

5 Q. Okay. All right. But the room - and maybe  
6 I said that wrong and I apologize I wasn't trying  
7 to confuse you.

8 The room that the cocaine was found in,  
9 okay? Is that your room?

10 A. Yes, it is.

11 Q. Okay. And so the room the cocaine was found  
12 in is the same room as that white garbage bag; is  
13 that right?

14 A. Right.

15 Q. Okay. And that's the -- inside that garbage  
16 bag was that Pyrex, and that set of scales, and  
17 all those sandwich bags, right?

18 A. Right.

19 Q. Some of Durrell's clothes were inside that  
20 garbage bag, too, weren't they?

21 A. Yeah, they was.

22 Q. Okay. Is that the room that you sleep in,  
23 or is that an extra room that --

24 A. That's the room that I was sleeping in.

25 Q. That's the room that you sleep in.

1           So you're trying to tell this jury -- Well,  
2 did you know the cocaine was there?

3       A.       I didn't know it was there until I went and  
4 looked in there, looked in there to see what he put  
5 in there. The dude. Try to see when he put in  
6 there.

7       Q.       Okay. So you didn't look inside that  
8 garbage bag?

9       A.       No, I didn't.

10      Q.       Okay. All right.

11           But you knew you knew that Durrell and this  
12 white man had come into your house and put a bag  
13 behind that box, didn't you?

14      A.       Yeah, I know that guy put it back there.

15      Q.       How do you know that white guy did it?

16      A.       Because I followed him.

17      Q.       Okay. So you saw him do that?

18      A.       Yes.

19      Q.       Okay. When the police came over and talked  
20 to you, and found that inside the house, did you  
21 tell them that Durrell placed a white bag against  
22 the back wall of the bedroom?

23      A.       No, I didn't.

24      Q.       You didn't tell them that?

25      A.       Huh-uh.

1 Q. And you didn't tell them that the white bag  
2 that Durrell brought into the house is the one  
3 that he placed behind the boom box?

4 A. No, I didn't.

5 Q. Okay.

6 A. I didn't even say he put no bag back there --

7 Q. Did you write out a statement for the  
8 police?

9 A. Yes, I wrote out something, but I don't know  
10 what it was.

11 Q. All right. Is that that statement that you  
12 wrote out? Is that your handwriting?

13 A. Uh-huh.

14 Q. Okay. That's your handwriting?

15 A. Yes.

16 Q. Okay.

17 (Whereupon, State's Exhibit Number  
18 16 was marked for identification.)

19 MR. BENSON: May we approach, Judge?

20 THE COURT: Sure.

21 (Side bar.)

22 THE COURT: Go ahead.

23 Q. So let me show you State's Exhibit 16. Is  
24 that the handwritten statement that you gave to  
25 the police?

1 (Witness reviews document.)

2 A. Yes, I wrote that because I was nervous --

3 Q. All right. Would you read what you wrote on  
4 the handwritten statement?

5 A. "My son came home with bags and left and two  
6 white guys were with him and he left come in with  
7 him the white bag behind the box."

8 Q. The white bag behind the box?

9 A. Uh-huh.

10 Q. All right. And we're talking about the boom  
11 box over in that corner, aren't we?

12 A. Yes.

13 Q. So you told the police that Durrell came in  
14 with the white bag that was found behind the box?  
15 Is that right?

16 A. I told them that --

17 Q. Okay?

18 A. -- but I know that white guy put it in there.

19 Q. Oh, okay. Now --

20 A. Because I was nervous --

21 Q. Ma'am, please.

22 I didn't ask any questions.

23 A. Okay.

24 Q. Do you recall telling or asking them if you  
25 were going to jail?

1 A. Do I recall asking who?

2 Q. The sheriff's office?

3 A. (Shaking head no.)

4 Q. You don't recall asking them that?

5 A. Did I ask them that?

6 Q. Yes. Did you ask them, am I going to jail?

7 A. No, I didn't ask them that.

8 Q. So if someone were to testify to that, they  
9 would be mistaken?

10 A. I didn't ask them that.

11 Q. Okay. So if somebody testified to that  
12 they'd be mistaken?

13 A. Yep.

14 Q. Okay. But if they testified that you told  
15 them that Durrell brought in the white bag that  
16 was found behind the boom box in there, they'd be  
17 correct about that because that's what you told  
18 them; isn't that right?

19 A. I didn't tell them that. I just wrote it  
20 down.

21 Q. Oh, okay. You didn't tell them that, you  
22 just wrote it down?

23 A. I just wrote it down, because I was nervous.

24 Q. You led them into that particular room; did  
25 you not?

1 A. Yes, I did.

2 Q. And you showed them where that white bag  
3 was?

4 A. Yes. I gave it to them.

5 Q. Okay. And given the opportunity to write  
6 down the truth, you put it on your son as opposed  
7 to the white guy; is that right?

8 A. Yeah, because I was nervous. And they was  
9 saying that --

10 Q. You want this jury to believe that?

11 A. Because they were saying that --

12 Q. Do you want this jury to believe that? That  
13 you blamed your son when he wasn't guilty?

14 A. No, I don't.

15 Q. You don't want them to believe that.

16 Who did you blame that day, Ms. Bester?

17 A. The white guy.

18 Q. The white guy --

19 A. Because he put it behind that red hamper.

20 I just was nervous that day when I wrote  
21 that.

22 Q. He came in with the white bag behind the  
23 box. You told the police, the sheriff's office,  
24 that day, that Durrell brought in the bag that was  
25 found behind the boom box, didn't you?



1 A. I wrote it.

2 Q. You wrote it?

3 A. Uh-huh.

4 MR. ANDERTON: Nothing further.

5 THE COURT: Any redirect?

6 MR. BENSON: No, Your Honor.

7 THE COURT: Any questions for Ms.  
8 Bester?

9 (No response.)

10 THE COURT: All right, then. You may  
11 stand down.

12 (Witness is released.)

13 THE COURT: Call your next witness  
14 defense.

15 MR. BENSON: At this time the defense  
16 rest.

17 THE COURT: All right. Ladies and  
18 gentlemen, I need to take care of a matter  
19 with the lawyers. It won't take but  
20 probably five minutes, okay.

21 And then I'll bring you back.

22 (Whereupon, the jury leaves the  
23 courtroom.)

24 THE COURT: Billy?

25 MR. BENSON: Sir?

1 THE COURT: Do you renew your motion  
2 for judgement of acquittal at the conclusion  
3 of all the evidence in the case?

4 MR. BENSON: I do, Your Honor.

5 THE COURT: All right. It's denied.  
6 Y'all ready to argue in a few minutes?

7 MR. BENSON: If I could have just a  
8 couple minutes with my client, Your Honor?

9 THE COURT: Mike?

10 MR. ANDERTON: During that two minutes,  
11 I may have two rebuttal witnesses.

12 Very short rebuttal witnesses.

13 THE COURT: All right.

14 (Whereupon, the jury returns to  
15 the courtroom.)

16 THE COURT: All right. Ladies and  
17 gentlemen, the defense has rested their  
18 case. And the law allows the State the  
19 option to call what we call rebuttal  
20 witnesses during the trial. So the State  
21 has advised the Court that they wish to call  
22 one or two rebuttal witnesses to rebut some  
23 testimony that you have just heard, okay.

24 All right.

25 DEPUTY ROGER MORRIS,

1           A rebuttal witness for the State,  
2           Was duly sworn and testified as follows:

3           THE COURT: Have a seat, get  
4           comfortable, scoot up towards the microphone  
5           and watch your knees.

6                       (Witness complies.)

7                       DIRECT EXAMINATION

8   BY MR. ANDERTON:

9   Q.     Tell us your name, please.

10 A.     I'm Roger Morris.

11 Q.     Mr. Morris, where do you work?

12 A.     Jefferson County Sheriff's Office, Narcotics.

13 Q.     What do you do for them?

14 A.     I'm an investigator.

15 Q.     All right. Is it Deputy Morris?

16 A.     That's correct.

17 Q.     Deputy, let me direct your attention to the  
18 24th of March, 2008 did you have occasion to  
19 participate in the investigation involving one  
20 Durrell Bester?

21 A.     I did.

22 Q.     All right. And did you come on that  
23 occasion to meet a lady by the name of Dorothy  
24 Bester?

25 A.     I did.

1 Q. Do you see Ms. Bester in the courtroom  
2 today?

3 A. Yes, I do.

4 Q. Okay. Could you point her out and tell me  
5 what she is wearing?

6 A. She's second row back (pointing), wearing a  
7 black shirt. A black sweater.

8 Q. Okay.

9 MR. ANDERTON: Let the record reflect  
10 that the witness has indicated Ms. Bester.

11 Q. Now, Mr. Morris, Did you have occasion to  
12 talk to Ms. Bester, or be present, when Ms. Bester  
13 was talked to by the Jefferson County Sheriff's  
14 Office?

15 A. Yes.

16 Q. All right. And who else was present?

17 A. Jude Washington was with me.

18 Q. All right. During the course of that  
19 conversation did you take note concerning that  
20 conversation?

21 A. Yes.

22 Q. All right. Have you had a chance to take a  
23 look at those notes?

24 A. I have today.

25 Q. Okay. Do you recall whether or not Ms.

1 Bester talked to you about the white bag that was  
2 recovered from her house?

3 A. Yes, sir.

4 Q. All right. And do you recall what your  
5 notes reflect when it comes to who brought that  
6 bag in?

7 A. She said that her son carried in a white bag.  
8 And she also said that there was a, I believe, two  
9 white males with him and one of them was possibly  
10 carrying a bag with him as well, and she wasn't  
11 sure.

12 Q. All right. Did she indicate to you,  
13 according to your notes, where Durrell Bester  
14 placed the white bag that he had?

15 A. Yes.

16 Q. Where?

17 A. On the back wall.

18 Q. Okay. And were you present when a white bag  
19 was in fact recovered from the back wall?

20 A. Yes, I was.

21 Q. Was that behind the boom box?

22 A. That would be correct.

23 Q. Okay.

24 And did Ms. Bester, from what you recall,  
25 did Ms. Bester led the sheriff's office to that

1 particular white bag?

2 A. Yes, sir.

3 Q. Did she indicate to the sheriff's officer,  
4 or to you, that Durrell had in fact placed that  
5 white bag in that corner behind the boom box?

6 A. She said Durrell had placed it there.

7 Q. Okay. Did she, at any point, tell you about  
8 a white male bringing a white bag in and placing  
9 it in a hamper.

10 A. I recall her saying that white male came in  
11 and was possibly carrying a white bag, she wasn't  
12 sure. I believe that's what she said to me.

13 Q. Okay. But the bag where the cocaine was  
14 found, did she identify that as the one that  
15 Durrell had?

16 A. Yes.

17 Q. Thank you.

18 THE COURT: Cross?

19 MR. BENSON: No questions.

20 THE COURT: All right. You may -- Do  
21 y'all have any questions for Deputy Morris?

22 (No response.)

23 THE COURT: All right, then. You're  
24 excused.

25 THE WITNESS: Thank you.

1 (Witness is released.)

2 MR. ANDERTON: State calls Jude  
3 Washington.

4 THE COURT: Jude Washington.

5 DEPUTY JUDE WASHINGTON,

6 A rebuttal witness for the State,  
7 Was duly sworn and testified as follows:

8 THE COURT: Have a seat, get  
9 comfortable, scoot up towards the  
10 microphone. Watch your knees.

11 (Witness complies.)

12 DIRECT EXAMINATION

13 BY MR. ANDERTON:

14 Q. Tell us your name, please.

15 A. Jude Washington.

16 Q. Mr. Washington, where do you work?

17 A. Jefferson County Sheriff's Office.

18 Q. And what do you do for them?

19 A. Undercover Vice and Narcotics.

20 Q. How long have you been with the sheriff's  
21 office?

22 A. Since 1995.

23 Q. All right. In March on the 24th of '08 were  
24 you working you the sheriff's office at that time?

25 A. Yes, sir.

1 Q. Did you participate in the investigation of  
2 an individual by the name of Durrell Bester?

3 A. Yes, sir.

4 Q. All right. Did you ultimately come to know  
5 a lady by the name of Dorothy Bester.

6 A. Well, I met her. Yes, sir.

7 Q. All right. And was that in fact over at  
8 1037 Avenue[sic] E on Huffman Road?

9 A. The apartment complex was I think was Twin  
10 Gates Apartment.

11 Q. Okay.

12 A. Yes, sir.

13 Q. Okay. Did you have occasion to be present  
14 when the sheriff's office talked to Ms. Bester?

15 A. Yes, sir.

16 Q. All right. Did Ms. Bester in fact write out  
17 a statement?

18 A. Yes, sir.

19 Q. All right. And let me show you what's been  
20 marked State's Exhibit 16. See if you recognize  
21 that particular statement.

22 (Witness reviews document.)

23 A. Yes, sir.

24 Q. Is that the statement -- Is that a copy of  
25 the statement Ms. Bester wrote out?



1 A. Yes, sir.

2 Q. Was that the statement written out by Ms.  
3 Bester, in her own handwriting?

4 A. Yes, sir.

5 Q. All right. During the conversation with Ms.  
6 Bester, did she tell you that Durrell Bester had  
7 brought a white bag into the apartment?

8 A. Yes, sir.

9 Q. Did she tell you where she Durrell Bester  
10 had placed that white bag?

11 A. She actually took us to where he put it.

12 Q. All right. Did she in fact sign a consent  
13 form?

14 A. Yes, sir.

15 Q. Before you came in?

16 A. Yes, sir.

17 Q. Or before you went into the apartment?

18 A. Prior to us entering her apartment, she  
19 signed the consent form.

20 Q. Okay. And did Hattie French in fact read  
21 that form to her?

22 A. Yes, sir. She read it and explained it to  
23 her.

24 Q. Did Ms. Bester sign it?

25 A. She signed it. Yes, sir.

1 Q. Okay. And did somebody witness it?

2 A. I was with Ms. French, I don't know if I  
3 witnessed it or somebody else witnessed it.

4 Q. Okay. Let me show you State's 15.

5 You know who witnessed it, can you  
6 recognize any of that handwriting?

7 (Witness reviewing document.)

8 A. No, sir.

9 Q. Okay. Now, Deputy Washington, did Ms.  
10 Bester tell the Jefferson County Sheriff's Office,  
11 while you were there, and did you hear her say  
12 that Durrell Bester had placed the white bag  
13 against the back wall of the bedroom?

14 A. Yes, sir.

15 Q. Okay. And you say she led y'all straight to  
16 that bag?

17 A. Yes, sir.

18 Q. Did she at any point ask whether or not she  
19 was going to jail?

20 A. When Sergeant French initially started  
21 talking to her about why we were there, and she  
22 asked if she mind if we came in the house to look.  
23 She asked Sergeant French if she was going to jail.  
24 Sergeant French told her that she was not who we  
25 were investigating.

1           And she said well come on. And then  
2           Sergeant French to her to hold up for a minute.  
3           And had somebody hand her consent form for her to  
4           sign.

5           Q.       And Ms. Bester signed that form?

6           A.       Yes, sir.

7           Q.       And then what happened?

8           A.       Then she took us to where she said Durrell  
9           placed the bag in the bedroom.

10          Q.       And where was that?

11          A.       It was in a far corner, behind a little  
12          radio. A little stand that was in the corner, it  
13          was placed behind that.

14          Q.       State's Exhibit No. 3, do you see where that  
15          bag was located in that picture?

16                   (Witness reviews document.)

17          A.       Yes, sir. It would have been behind that  
18          stand there?

19          Q.       Behind that stand right there (pointing)?

20          A.       Yes, sir.

21          Q.       All right. State's Exhibit 4, State's  
22          Exhibit 5 do they show that radio?

23                   (Witness reviews documents.)

24          A.       Yes, sir.

25          Q.       And does State's 5 show the bag, looking

1 behind that stand?

2 A. Yes, sir.

3 Q. All right. And is that the correct location  
4 where that bag, in fact, was located?

5 A. Yes, sir.

6 Q. And is that the location that Ms. Bester led  
7 the Jefferson County Sheriff's Office to, once she  
8 found out she was not going to jail?

9 A. Yes, sir.

10 Q. All right.

11 MR. ANDERTON: That's all.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MR. BENSON:

15 Q. Real quick, Deputy Washington. You  
16 indicated that Ms. Bester asked if she was going  
17 to jail?

18 A. Yes, sir.

19 Q. Why would she make that --

20 MR. ANDERTON: Objection, Your Honor.  
21 Calls for a mental operation.

22 THE COURT: You said, Ms. Bester asked  
23 if she was going to jail. And then you said  
24 something else, "why"?

25 MR. BENSON: I asked if he had any idea

1           why she would be asking.

2           THE COURT: Sustained, mental  
3           operation.

4           Go ahead.

5           Next question.

6           MR. BENSON: That's all.

7           MR. ANDERTON: Nothing further.

8           THE COURT: Any questions for Officer  
9           Washington?

10           (No response.)

11           THE COURT: All right, then. You're  
12           excused, Officer Washington.

13           THE WITNESS: Yes, sir.

14           THE COURT: 16 is here. In case  
15           anybody wanted it. (Indicating). I didn't  
16           hear it offered.

17           MR. ANDERTON: State would move to  
18           introduce State's 16.

19           THE COURT: All right. 16 is in.

20           (Whereupon, State's Exhibit Number  
21           16 was received into evidence.)

22           THE COURT: Anything else for the  
23           State?

24           MR. ANDERTON: Nothing, Your Honor.  
25           The State would rest.

1 THE COURT: All right. State rests.

2 All right. Y'all ready to argue,  
3 gentlemen?

4 MR. ANDERTON: Yes.

5 MR. BENSON: Yes, Your Honor.

6 THE COURT: Well, I guess we do need to  
7 have a short conversation. -

8 Would y'all go back for a minute and  
9 let me talk to the lawyers for a second?

10 (Whereupon, the jury leaves the  
11 courtroom)

12 THE COURT: Your motion is deemed made  
13 timely, and it's overruled.

14 MR. BENSON: Judge, I renew my motion  
15 for judgement of acquittal.

16 THE COURT: Same ruling, denied. Bring  
17 them in.

18 (Whereupon, the jury returns to  
19 the courtroom.)

20 THE COURT: All right. Ladies and  
21 gentlemen, you've heard all of the evidence  
22 in the case.

23 And now, you are going to hear the  
24 closing arguments of the attorneys, okay.  
25 So it's your duty to remember the evidence

1 the way it came from the witness stand. The  
2 attorneys, in closing arguments, get to  
3 review the evidence for you, and they also  
4 get to argue reasonable inferences from the  
5 law.

6 So since the State has the burden of  
7 proof, the State gets to argue their case  
8 first and last. With the defense arguing  
9 their case in the middle.

10 So let's turn our attention to the  
11 State. Mike, you have the floor.

12 MR. ANDERTON: Thank you, Your Honor.

13 (Whereupon, the State presented  
14 their closing argument to the  
15 jury, there being no objections or  
16 exceptions taken thereto.)

17 (Whereupon, the defense presented  
18 their closing argument to the  
19 jury, there being no objections or  
20 exceptions taken thereto.)

21 (Whereupon, the State presented  
22 their closing argument to the  
23 jury, there being no objections or  
24 exceptions taken thereto.)

25 THE COURT: All right. Ladies and

1 gentlemen, we are at that part of the trial  
2 where it is my duty to instruct you as to  
3 the law that you should apply in this case.  
4 And I will proceed to do that, at this time.

5 This Defendant, ladies and gentlemen,  
6 enters into this trial with the presumption  
7 of innocence. That is, he enters into  
8 the trial with the presumption that he is  
9 not guilty. And that presumption of  
10 innocence follows him throughout this trial,  
11 until such time as the State can prove  
12 beyond a reasonable doubt his guilt.

13 Now, the burden of proof is on the  
14 State to convince you, beyond a reasonable  
15 doubt of the Defendant's guilt. The  
16 Defendant has no burden of proof.

17 Now, the term reasonable doubt is  
18 defining. It means a doubt that you can  
19 give a good, sound, sensible reason for. It  
20 does not mean an imaginary doubt, or a  
21 speculative doubt, or a fanciful doubt. The  
22 law contemplates a reasonable doubt.

23 And since this is true, proof beyond a  
24 reasonable doubt does not mean to a  
25 mathematical certainty. Because in all



1           probability in cases where we rely upon the  
2           testimony of human beings, that would be  
3           impossible. The best way I know how to  
4           explain it, is this:

5                   If, after a full and fair consideration  
6           of all the evidence in the case, there  
7           remains in your minds an abiding conviction  
8           of the Defendant's guilt, then in that  
9           event, of course, you have been convinced to  
10          the required degree, and the Defendant  
11          should be convicted.

12                   If, on the other hand, after that same  
13          full and fair consideration of all the  
14          evidence in the case, there does not remain  
15          in your minds an abiding conviction of the  
16          Defendant's guilt; well, of course, in that  
17          event you have not been convinced to the  
18          required degree, and the Defendant should be  
19          acquitted.

20                   Now, ladies and gentlemen, I read the  
21          indictment and -- two indictments and one  
22          complaint to you in the beginning. And I  
23          remind you before you go back into the jury  
24          room to begin your deliberations that the  
25          indictments and complaints are not evidence.

1 And are not to be considered as evidence  
2 against the Defendant.

3 Those documents are the formal means by  
4 which defendants in criminal cases are  
5 advised of the specific charge or charges  
6 against him or her.

7 To these indictments, these charges,  
8 these allegations, this Defendant has  
9 entered a plea of not guilty. He says that  
10 he is not guilty of the charged offenses.  
11 So the indictments and the complaints on the  
12 one hand, and his plea of not guilty on the  
13 other; those two things come together to  
14 make up the issues regarding guilt or  
15 innocence that you all are called upon to  
16 decide, in this case. But the indictments  
17 and complaints are not evidence.

18 What the attorneys say ladies and  
19 gentlemen, is not evidence, in the case.  
20 Additionally, as a matter of fact, what the  
21 Court says is not evidence. There is  
22 nothing that I have said during the course  
23 of presiding over this trial that was  
24 intended in any way to try to infer that the  
25 Court felt one way or the other concerning

1 the guilt or innocence of this Defendant.  
2 The law does not allow me to have an opinion  
3 regarding the Defendant's guilt or innocence  
4 at this time and I do not. I have simply  
5 been trying to do my best in presiding over  
6 this trial.

7 Now, ladies and gentlemen, you are the  
8 triers and finders of the facts in this case  
9 from the evidence. And in determining the  
10 guilt or innocence of this Defendant, you  
11 should not go outside of the evidence that  
12 you have heard here from this witness stand.  
13 Except the law does say that you should use  
14 your good common sense and your life  
15 experiences when deliberating in this case.  
16 Take that common sense and those life  
17 experiences with you back into the jury room  
18 during your deliberations and use them.

19 You are the triers and finders of the  
20 facts in the case. And not only that, you  
21 are the sole and exclusive judges of the  
22 credibility, the believability of the  
23 witnesses who have testified in the case.  
24 It is your job to determine how much weight,  
25 and how much credibility you will give to

1 the witness's testimony.

2 The law says that in judging the  
3 credibility of witnesses, you may consider  
4 any interest, any bias, any prejudice that's  
5 been shown on a part of a witness. If you  
6 believe that it is such that it might cause  
7 a witness to tell you something other than  
8 the truth.

9 Additionally, you may consider a  
10 witness's appearance and demeanor while  
11 testifying on the witness stand in  
12 determining how much weight and how much  
13 credibility you will assign to the witness  
14 testimony.

15 So as I mentioned earlier, what you  
16 want to do is determine what testimony you  
17 find is believable, i.e. credible, okay.  
18 And then you take that testimony that you  
19 find to be credible, believable, and you ask  
20 yourself, you weigh it. Am I convinced  
21 beyond a reasonable doubt of the Defendant's  
22 guilt of the charges? If you are, you  
23 convict. If you are not, you acquit.

24 Now, during the course of the trial  
25 there was a witness that was qualified to

1       testify as an expert witness, this is  
2       because the law recognizes that certain  
3       people because of their education and  
4       training, they have special information  
5       different than the ordinary lay person.

6               The law allows these people to give  
7       answers to hypothetical questions, and to  
8       answer questions beyond that of an ordinary  
9       lay person. But the law is clear that you  
10      are not duty bound to follow the testimony  
11      of an expert. The law instead urges you to  
12      consider expert testimony along with all the  
13      other testimony in the case.

14             If you believe, ladies and gentlemen,  
15      that any witness has intentionally lied to  
16      you concerning a material fact. Something  
17      that's important to the resolution of the  
18      case, one way or the other. Then, the law  
19      is clear, you may disregard either all, or  
20      any part of that witness's testimony.

21             I'm not talking about the situation  
22      where a witness, in an effort to try to tell  
23      you the truth, simply makes a mistake. No,  
24      that's not what I speak of. What I'm  
25      speaking of is the situation where the

1 witness intentionally took the stand, with  
2 the purpose of lying to you, concerning an  
3 important matter.

4 It's just like in everyday life, once a  
5 witness lies to you, a person lies to you  
6 then you don't readily believe that person  
7 as quickly, do we?

8 So the law uses that same sort of  
9 common sense logic, and guides you by saying  
10 that if you feel that a witness  
11 intentionally lied to you concerning a  
12 material fact, you may disregard either all  
13 or any part of that witness's testimony.

14 So let's turn our attention to the  
15 charges that you have to look at, ladies and  
16 gentlemen, and you have three of them of  
17 course.

18 The first one, is the trafficking in  
19 cocaine charge. Failure to affix tax stamps  
20 to that cocaine. And three, possession of  
21 drug paraphernalia.

22 The law says that a person commits the  
23 crime of trafficking in cocaine, if he  
24 knowingly is in actual or constructive  
25 possession of an excess of 28 grams of

1 cocaine.

2 All right. There are different amounts  
3 for different things. Like for marijuana  
4 it's 2.2 pounds, okay. But this is cocaine.  
5 So it's 28 grams is the limit. Is the  
6 dividing line, more accurately.

7 So to convict this Defendant of the  
8 offense of trafficking in cocaine, the State  
9 must prove the following four elements to  
10 you.

11 First, that this Defendant knowingly  
12 was in actual or constructive possession.

13 Secondly, of cocaine. That the  
14 substance was cocaine. That you heard the  
15 testimony about.

16 Thirdly, that it was an excess of 28  
17 grams.

18 And fourthly, that in doing so the --  
19 and "in doing so" meaning being in  
20 possession of it, he was -- he acted  
21 knowingly.

22 The law says a person acts knowingly  
23 with respect to a result or to conduct when  
24 he is aware of that conduct, or he is aware  
25 that the circumstance exists. So we're not

1 talking about accidentally being in  
2 possession of something. We're talking  
3 about knowing what you're doing basically,  
4 okay.

5 We're not talking about a situation  
6 like, let's say she has a coat on her lap.  
7 Let's say that when she went in the  
8 restroom, somebody put 29 grams of cocaine  
9 in there. She came back and put the coat  
10 back on her lap. Well, would she knowingly  
11 be in possession of it? No. So here we're  
12 talking about knowing what you're doing.  
13 Knowing conduct.

14 If you find, that the State has proved  
15 each one of those four elements and proved  
16 them beyond a reasonable doubt, you shall  
17 convict the Defendant of trafficking in  
18 cocaine; if you find that the State has  
19 failed to prove any one or more of those  
20 four elements, you shall acquit the  
21 Defendant of trafficking in cocaine.

22 Which turns our attention to the second  
23 charge of failure to affix a tax stamp. To  
24 establish this crime the State must prove  
25 two things.



1           First, that this Defendant possessed a  
2           controlled substance. Such as the cocaine,  
3           alleged in the other charge, the initial  
4           charge.

5           And secondly, that he possessed it  
6           without affixing the proper tax stamps on  
7           the controlled substance.

8           So if find that the State has proved  
9           both of those two elements that the  
10          Defendant possessed the controlled  
11          substance, i.e., cocaine. And that he did  
12          so without placing the proper State tax  
13          stamp thereto, then you shall convict him.  
14          If you find that the State has failed to  
15          prove any one or more of those two elements,  
16          you shall acquit him.

17          Which brings us to the last charge,  
18          possession of drug paraphernalia.

19          Well, let me edify you a little bit.  
20          The term "drug paraphernalia" means all  
21          equipment products, and materials of any  
22          kind which are used, intended for use, or  
23          designed for use in planting, propagating,  
24          cultivating, growing, harvesting,  
25          manufacturing, compounding, converting,

1 producing processing, preparing, testing,  
2 analyzing, packaging, repackaging, storing,  
3 containing, concealing, injecting,  
4 ingesting, inhaling or otherwise introducing  
5 into the human body, a controlled substance.

6 So if you use things to do that stuff  
7 to introduce drugs into the human body, I  
8 think is what they are talking about.

9 To convict, the State must prove two  
10 things beyond a reasonable doubt.

11 One, that the Defendant possessed drug  
12 paraphernalia, as defined to you here.

13 Secondly, that he used the drug  
14 paraphernalia or possessed it with intent to  
15 use it in connection with a drug crime.

16 A drug crime would be trafficking.  
17 Sale or distribution of drugs, or possession  
18 of a lesser amount of drugs.

19 Does that's make sense?

20 (No response.)

21 THE COURT: You've heard me use the  
22 word terms actual possession and  
23 constructive possession.

24 Let's say that in my little robe here  
25 on the inside pocket, that I had over 28

1           grams of cocaine. Then, I would be in  
2           actual possession of the cocaine, would I  
3           not?

4           Okay.

5           In my chambers, I have a restroom,  
6           okay.

7           And in that restroom I have a  
8           toothbrush, toothpaste. Now, that  
9           toothbrush and that toothpaste is not on my  
10          person right now, is it? But, it's what?  
11          Within my control. And it is mine. I own  
12          it. I bought it. I intend to possess it.  
13          And if someone goes in there and takes it,  
14          they still are taking it from me. Because  
15          why? I am in constructive possession of it.

16          Does that make sense?

17          Give you another example. There's a  
18          jail next door to us. Sometimes we bring  
19          people over here from the jail next door.  
20          And the people we bring over here leave  
21          items of personal property over there in the  
22          jail, while they are coming over here to  
23          court.

24          If someone takes their property while  
25          they are over here. They are taking it from

1           their, what kind of possession?

2                   Constructive possession. They still  
3 own it, okay.

4                   So that's the thing about constructive  
5 possession is that you intend to manifest  
6 control other the property. You can have  
7 something at home in your refrigerator.  
8 It's not on your person actually. But it's  
9 within your control. So it's the same sort  
10 of thing.

11                  Now, I can give y'all a long definition  
12 if y'all don't understand that. Okay.

13                  There are two types of evidence.  
14 There's direct evidence. You know, when a  
15 witness says, I saw this, I smelt this, I  
16 heard that. Smelled, heard, taste, saw; all  
17 of those sensories. That's direct evidence.  
18 And you look at it as direct evidence of  
19 something.

20                  Then there is a circumstantial  
21 evidence. Circumstantial evidence is a  
22 little harder to describe, but you are very  
23 familiar with it, even if you don't know it.  
24 Circumstantial evidence has a nice, long,  
25 little definition. But it's just a fancy

1 way of saying this. If you can prove one  
2 thing, you can infer another thing from that  
3 thing that you proved.

4 For example, in the evenings when I go  
5 home and I unwind and I sit on my balcony,  
6 at my loft. I like to drink a glass of  
7 Arizona Ice Tea. And the way that I face is  
8 kind of east, and I can see south, and I can  
9 see north, and I see the planes come and go.  
10 And sometimes I look up there and I see  
11 lines in the sky. And sometimes I look up  
12 there and I see jet planes leaving lines in  
13 the sky, okay.

14 Now, when I see the jet planes leaving  
15 the lines in the sky, the white lines from  
16 the jet fuel. Then I know what left the  
17 line there, don't I? That's actual.

18 But, when I do not see it -- That's  
19 actually evidence, direct evidence. I see  
20 the plane leaving the smoke line. But when  
21 I don't see the plane, but I still see those  
22 lines. I still know a plane caused the  
23 smoke line. Okay. That's circumstantial  
24 evidence. Of the fact that at some point, a  
25 jet plane did leave those smoke lines in the

1 sky. And our evidence is no different.

2 The law is clear, it says that  
3 regardless of the type of evidence, whether  
4 it's direct, circumstantial or both; the  
5 test is whether or not you are convinced  
6 beyond a reasonable doubt of the Defendant's  
7 guilt, before you would be authorized to  
8 convict.

9 Okay. Now tomorrow morning, you will  
10 begin deliberations. Be here before nine  
11 o'clock. I will have the verdict form  
12 prepared for you. The verdict form will  
13 give you the following choices:

14 One, we, the jury, find the Defendant  
15 guilty of trafficking in cocaine or not  
16 guilty.

17 Two, we, the jury, find the Defendant  
18 guilty of failure to affix a tax stamp; or  
19 two, not guilty.

20 Three, we, the jury, find the Defendant  
21 guilty of possession of drug paraphernalia;  
22 or two, not guilty.

23 It will be two options for each of the  
24 three charges. You will check the one that  
25 you unanimously agree upon. Your verdict

1 must be the verdict of all 12 of you and  
2 since I've already lost my alternate, please  
3 don't let anything happen to you this  
4 evening.

5 Don't go out this evening, just stay at  
6 home and get you good night's rest, you  
7 know. And be back here before nine o'clock.

8 When you go back to deliberate tomorrow  
9 you will have your brains that you've heard  
10 the evidence. You'll have your note that  
11 you preserved testimony. You will have the  
12 exhibits that the court reporter will bring  
13 back to you for your review.

14 Is that sealed?

15 MR. ANDERTON: The cocaine?

16 THE COURT: Uh-huh.

17 MR. ANDERTON: I'm assuming it is, it  
18 usually is.

19 THE COURT: All right. Don't y'all  
20 open the cocaine, all right?

21 We don't want any problems, don't open  
22 it.

23 Okay. Do y'all have any questions  
24 about anything?

25 Y'all know not to go to any of the

1 addresses that you've heard. You know not  
2 to talk to you -- Tell your girlfriends and  
3 boyfriends, and husbands and stuff like that  
4 after the case is over you can talk to them  
5 as long as they would like to. You just  
6 can't discuss it right now, okay. Okay.

7 Y'all have a good -- Leave your  
8 notepads in the back. Put a sign on the  
9 door. So that the cleaning people won't  
10 destroy their notepads and throw them away.

11 Y'all have a good and safe evening, and  
12 I'll see y'all in the morning by nine.

13 Everyone else remain seated until the  
14 jury leaves out.

15 (Jury released.)

16 THE COURT: Anything for the State?

17 MR. ANDERTON: Nothing, Your Honor.

18 THE COURT: Anything for the defense?

19 MR. BENSON: No, Your Honor.

20 (Whereupon, court was adjourned.)

21 April 8th, 2009

22 (Whereupon, the following  
23 proceedings resumed at 9:00 a.m.  
24 on the 8th day of April, 2009 with  
25 the Defendant and all counsel



1 present.)

2 (Whereupon, the jury begins  
3 deliberating at 9:00 a.m.)

4 (Whereupon, the Court received a  
5 communication from the jury at  
6 9:50 a.m. where the following was  
7 heard in open court with the  
8 Defendant and all counsel  
9 present.)

10 THE COURT: All right. Bring them in.

11 (Whereupon, the jury returns to  
12 the courtroom.)

13 THE COURT: Have a seat.

14 All right. Ladies and gentlemen of the  
15 jury, it is my understanding that you have  
16 sent me a communication as follows:

17 "What does the law say about the  
18 knowledge of the use of drugs and sell of?"

19 Is that the question?

20 A JUROR: Yes, Your Honor.

21 THE COURT: Can you tell me in  
22 reference to which charge is this question  
23 directed toward?

24 Trafficking?

25 A JUROR: The trafficking.

1 THE COURT: Okay.

2 The law says a person acts knowingly  
3 with respect to conduct or to a  
4 circumstance, when he is aware of -- I'm  
5 sorry, when he is aware that his conduct is  
6 of that nature, or that the circumstance  
7 exists.

8 (Pause.)

9 THE COURT: A person acts knowingly  
10 with respect to conduct. That's a fancy way  
11 of saying that when you do something you  
12 know what you are doing.

13 Or to a circumstance. Being in a  
14 certain situation.

15 When he is aware. When he knows what's  
16 going on.

17 When he is aware that his conduct.  
18 What he is doing.

19 Is of that nature. Criminal conduct.

20 Or that the circumstance exists. With  
21 what's going on there.

22 Does that make sense?

23 A JUROR: Yes, Your Honor.

24 THE COURT: Does that help you?

25 A JUROR: Yes, Your Honor.

1 THE COURT: May I help you further?

2 (No response.)

3 THE COURT: You may retire to  
4 deliberate.

5 (Whereupon, Court's Exhibit Number  
6 1 was marked and received into  
7 evidence.)

8 (Whereupon, the jury continues to  
9 deliberate.)

10 (Whereupon, at 10:08 a.m. the jury  
11 reaches a verdict.)

12 (Whereupon, the following is heard  
13 in open court with the Defendant  
14 and all counsel present, with the  
15 jury.)

16 THE COURT: All right. Let the record  
17 reflect that the Defendant is present, all  
18 counsel are present.

19 Ladies and gentlemen, it is my  
20 understanding that Mr. Josh Stewart is your  
21 foreperson; is that correct?

22 FOREPERSON: Yes, Your Honor.

23 THE COURT: Is it my understanding that  
24 you have arrived at a unanimous verdict as  
25 it relates to each three counts?

1 FOREPERSON: Yes, Your Honor.

2 THE COURT: Would you please stand?

3 (Foreperson complies.)

4 THE COURT: If you would, please stand  
5 with counsel?

6 (They comply.)

7 THE COURT: Would you please read the  
8 verdict of the jury?

9 FOREPERSON: We, the jury, find the  
10 Defendant, Durrell Bester, guilty of  
11 trafficking of cocaine.

12 Guilty of failure to affix a tax stamp,  
13 and guilty of possession of drug  
14 paraphernalia.

15 THE COURT: All right. Thank you very  
16 much. You may be seated.

17 (Foreperson complies.)

18 THE COURT: You may be seated.

19 (They comply.)

20 THE COURT: Ladies and gentlemen of the  
21 jury, I know that both sides wish to thank  
22 you for your work in this case and you all  
23 have been very attentive to the evidence in  
24 this case. And you have certainly fulfilled  
25 your civic responsibility. And we really

1 appreciate it.

2 At this time, I'm going to ask that you  
3 return to the jury room, where I will join  
4 you shortly.

5 (Jury leaves.)

6 THE COURT: All right. Mr. Bester, the  
7 jury has returned the verdict in the  
8 following words and phrases, CC08-3771 and  
9 72:

10 We, the jury, find this Defendant,  
11 Durrell Bester, as to count one, guilty of  
12 trafficking in cocaine; count two, guilty of  
13 failure to affix tax stamp; CC08-3772,  
14 guilty of possession of drug paraphernalia.

15 The Court concurs in the verdict of the  
16 jury and I hereby find that you are guilty  
17 of these three offenses.

18 Sentencing is hereby set on May 26th,  
19 '09 at nine o'clock a.m.

20 Billy, I need you to do some paperwork  
21 so that the probation office can come over  
22 and get some information from him for the  
23 pre-sentence report.

24 Thank you, sir.

25 We will be adjourned.

1 (Whereupon, the following  
2 proceedings were adjourned at  
3 10:11 a.m. on the 8th day of  
4 April, 2009.)

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7 \*\*\*\*\* END OF PROCEEDINGS \*\*\*\*\*  
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1 CERTIFICATE OF COMPLETION OF  
2 REPORTER'S TRANSCRIPT  
3

4 IN RE:  
5

6 DURRELL BESTER V. STATE OF ALABAMA

7 CC2008-3771 & CC2008-3772

8 \*\*\*\*\*  
9

10 I, Alicia Martin, Official Reporter for the  
11 Tenth Judicial Circuit of Alabama and Notary  
12 Public, State of Alabama at Large, do hereby  
13 certify there came before me the aforementioned  
14 proceedings, including witnesses who were duly  
15 sworn to testify to the truth concerning the  
16 matters in this cause, said evidence being taken  
17 down stenographically by me and transcribed by me  
18 or under my supervision and control.

19 All the pages of the transcript are  
20 numbered serially at the right-hand corner of each  
21 page, prefaced by the reporter's index, followed  
22 by the transcript, and ending with the numbers  
23 appearing on this certificate.

24 I further certify that I am neither  
25 attorney or counsel for, nor related to, or

1 employed by any of the parties to the action in  
2 which this proceeding is taken; and furthermore,  
3 that I am not a relative or employee of any  
4 attorney or counsel employed by the parties hereto  
5 or financially interested in the action.

6 IN WITNESS THEREOF, I have set my hand and  
7 affixed my Notarial seal this the 20th day of  
8 November, 2009.

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Alicia Martin

Alicia Martin, Official Court Reporter  
ACCR#218



|   |  |                           |
|---|--|---------------------------|
| State of Alabama<br>Unified Judicial System<br>Form ARAP 13 | <b>CERTIFICATE OF COMPLETION<br/>REPORTER'S TRANSCRIPT</b> | Page Number<br><b>243</b> |
|---|--|---------------------------|

TO: The Clerk of the Court of Criminal Appeals  
P. O. Box 301555  
Montgomery, Alabama 36130-1555

Fax: (334) 242-4689

Criminal Appeals Case Number

**CR 08 - 11636**

**Durrell Bester**

Appellant's Name

v. **State of Alabama**

Appellee

On appeal from the:



Circuit Court of



District Court of



Juvenile Court of

**Jefferson** County

Trial Court Case Number

**CC0008-3771**  
**CC0008-3772**

Notice of Appeal Date

**7/8/09**

I, **Alicia Martin**

, certify that I have this date completed and filed with the clerk of the trial court an original and three copies of a true and correct transcript of all proceedings in the above referenced case that were reported by me and were specifically designated by the appellant for inclusion on the Reporter's Transcript Order. The transcript, which is numbered serially in the upper right-hand corner of each page, begins with a copy of the Reporter's Transcript Order and an index of both the exhibits and the testimony of the witnesses. The original transcript concludes with the original of this notice and the copies of the transcript conclude with copies of this notice. The page number appearing in the upper right-hand corner of this certificate is the last page of my portion of the transcript in this case.

Done this the

**24<sup>th</sup>**

day of

**November**

**2009**

**Alicia Martin**

Court Reporter

**FILING AND SERVICE OF THIS FORM:** Pursuant to Rule 11(b), A.R.App.P., the court reporter should file a copy of this certificate with the Clerk of the Court of Criminal Appeals and should serve copies of the certificate on counsel or the appellant or the appellant if he or she is not represented by appellate counsel, the attorney general and the district attorney, unless the appeal is from a municipal appeal, in which event a copy of the form should be served on the municipal prosecutor rather than the attorney general and district attorney.

1  
2 ORIGINAL

3 STATE OF ALABAMA  
4 IN THE CIRCUIT COURT  
5 OF THE TENTH JUDICIAL CIRCUIT  
6 FOR JEFFERSON COUNTY, ALABAMA  
7 CRIMINAL DIVISION

8 DURRELL BESTER,

9 APPELLANT,

10  
11 VS.

Case Number: CC2008-3771,

12 CC2008-3772

13 STATE OF ALABAMA,

14 FILED IN OFFICE  
CIRCUIT CRIMINAL

15 APPELLEE.

NOV 24 2009

16 ANNE-MARIE ADAMS  
CLERK  
17 -----  
18

19 COURT REPORTER'S OFFICIAL TRANSCRIPT  
20

21 The above-entitled case came on to be heard  
22 before the Honorable Clyde E. Jones, Judge, on the  
23 26th day of May, 2009 at or about 9:00 a.m. before  
24 Alicia Martin, Official Court Reporter and  
25 Commissioner.

APPEARANCES

Representing the State of Alabama:

Mr. Mike Anderton,  
Deputy District Attorney

Representing Defendant Bester:

Mr. William Benson,  
Attorney at Law  
Birmingham, Alabama

EXHIBIT INDEXSTATE'S EXHIBITS:MAR / ADM

A Prior Conviction

6

6

B Prior Conviction

6

6

C Prior Conviction

6

6

D Prior Conviction

6

6

SENTENCING

May 26th, 2009 - 9:00 a.m.

(Whereupon, the following was  
heard in open court with the  
Defendant and all counsel  
present.)

THE COURT: All right. This is State  
of Alabama vs. Durrell Bester  
CC08-3772[sic].

Back on April 8th, 2009 he was found  
guilty of trafficking in cocaine, failure to  
affix tax stamp, and possession of drug  
paraphernalia.

We're for sentencing today.

What says the State?

MR. ANDERTON: Judge, for purposes of  
this hearing the State would move to  
introduce four prior felony convictions.  
Certified copies of those convictions.

In case number CC1999-970, State would  
move to introduce a certified copy of a  
conviction out of the Circuit Court of  
Jefferson County in Bessemer, where Durrell  
Bester, represented by Sherrie Dudley, pled  
guilty to -- was originally charged with

1 attempted murder, pled guilty to discharging  
2 a firearm into an occupied vehicle. And was  
3 sentenced to a period of ten years in the  
4 penitentiary by the Honorable Mac Parsons.

5 THE COURT: All right.

6 MR. ANDERTON: And I have shown each  
7 one of these to defense counsel.

8 In case number CC99-1278, out of the  
9 Circuit Court of Jefferson County Bessemer  
10 Division, Durrell Bester was represented by  
11 Mr. Jeff Hood. And in that case, in front  
12 of the Honorable Teresa Petelos, Mr. Bester  
13 -- I'm sorry, in front of Mac Parsons, Mr.  
14 Bester pled guilty to discharging a firearm  
15 into an occupied vehicle. Originally having  
16 been charged with assault first-degree. And  
17 at that time, Mr. Bester was sentenced to a  
18 period of ten years incarceration.

19 CC2000-1258, Durrell Bester was  
20 represented by the Honorable Jadd Fawwall,  
21 and at that time pled guilty in front of the  
22 Honorable Mac Parsons in the Circuit Court  
23 of Jefferson County Bessemer Division to  
24 possession of marijuana first-degree, and  
25 was sentenced to ten years in the

1 penitentiary.

2 And finally, a certified copy of a  
3 conviction in case number CC2000-1259 in the  
4 Circuit Court of Jefferson County, Bessemer  
5 Division where Durrell Bester was charged  
6 with possession of marijuana, and in fact  
7 pled to possession of marijuana first-degree  
8 in front of the Honorable Mac Parsons. And  
9 at that time received a sentence of ten  
10 years in the penitentiary.

11 State would move to introduce each one  
12 of those. We don't have them marked yet,  
13 but I would propose, Your Honor, that we  
14 mark them State's Exhibits A, B, C and D for  
15 purposes of this sentencing hearing.

16 THE COURT: All right. They're in.

17 (Whereupon, State's Exhibits A, B,  
18 C and D were marked and received  
19 into evidence.)

20 MR. ANDERTON: Judge, Mr. Bester was  
21 convicted of trafficking in marijuana --  
22 Excuse me, trafficking in cocaine, in this  
23 particular case, along with possession of  
24 drug paraphernalia, but also failing to  
25 affix the tax stamps.

1           When it comes to the trafficking in  
2 cocaine, Mr. Bester, based on his prior  
3 felony convictions and the Alabama Habitual  
4 Offender Act, would be looking at a sentence  
5 of either life or life without parole in the  
6 penitentiary.

7           State would ask this Court to sentence  
8 Mr. Bester to a sentence of life in prison  
9 without the possibility of parole. The  
10 State is basing this on his prior felony  
11 convictions. That is, the discharging a  
12 firearm into an occupied dwelling[sic]. Two  
13 counts of each of those. Two separate  
14 incidents where Mr. Bester pled guilty.

15           The State proposes that these are in  
16 fact violent acts. And this Court can  
17 certainly find Mr. Bester to be a violent  
18 offender. And the life or life without  
19 parole, as this Court knows, is certainly  
20 within the discretion of this Court.

21           But the State would propose that if the  
22 life without parole sentence was in fact  
23 made for violent offenders, and Mr. Bester  
24 has in fact proven himself in the past to be  
25 a violent offender. Now he has been



1 convicted of the trafficking in cocaine.  
2 And we would ask for a life without parole  
3 sentence.

4 THE COURT: Anything for the defense?

5 MR. BENSON: Yes, Your Honor.

6 The State has pointed out that he has  
7 been priorly convicted of some violent  
8 crimes. This crime itself is not a violent  
9 crime. Two prior crimes were Class B, two  
10 are Class C, and occurred a number of years  
11 ago. Over nine years ago.

12 Since that time, my client's been, you  
13 know, a stand-up citizen. Has two children,  
14 a ten year-old little girl, and a four  
15 year-old little girl, also is expecting  
16 another child.

17 There's a -- prior to while we were  
18 waiting for trial on this, my client was  
19 attending Narcotics Anonymous. Was  
20 attending the Fatherhood Program,  
21 counseling.

22 This is a man who is trying to get his  
23 life turned around. He's made some mistakes  
24 --

25 THE COURT: Did you know that he was

1 keeping drugs in his mother's home?

2 MR. BENSON: That was the testimony at  
3 trial. The mother testified that there was  
4 a, you know, another party that brought the  
5 drugs into the house.

6 THE COURT: Well, when they went to  
7 arrest him, when they were executing the  
8 search warrant, the mother said, in a  
9 written statement, that the bedroom belonged  
10 to her son, Durrell Bester. And in the  
11 middle of the bedroom floor was another bag;  
12 which contained a box of plastic baggies,  
13 digital scales, and a Pyrex measuring cup  
14 with cocaine residue.

15 MR. BENSON: Yes, Your Honor.

16 THE COURT: And they also found a bag  
17 hidden behind a stereo in his room. Which  
18 contained 75 grams of crack and powder  
19 cocaine. There was a gun. A .22 caliber  
20 handgun found.

21 MR. BENSON: There was no charge  
22 brought on the gun. It was a licensed gun.

23 The mother can't be here today, she  
24 just got out of the hospital a day or two  
25 ago, for heart failure. She suffers from a

1        number of health issues, including heart  
2        failure and diabetes.

3                Mr. Bester is one of her main  
4        caregivers. I have a number of individuals  
5        here that would like to speak on  
6        Mr. Bester's behalf if you would like to --

7                THE COURT: Raise your right hand.

8                (Whereupon, the witnesses  
9        testifying on behalf of the  
10       Defendant, Durrell Bester, were  
11       duly sworn and testified as  
12       follows.)

13               THE COURT: All right. State your name  
14       first.

15               THE WITNESS: Carlos Williams, I'm  
16       Pastor for Greater Grace Baptist Church --

17               THE COURT: Go ahead.

18               THE WITNESS: Mr. Bester has been a  
19       member of my church. I've been a pastor of  
20       two churches prior to this church, 46th  
21       Baptist Church in East Lake. And in my  
22       presence he's always been a very respectable  
23       young man, in my presence.

24               I'm not really familiar with the  
25       details outside of the church and the

1 attendance that he's had on previous  
2 occasions. But he has been a very  
3 respectable young man.

4 His mother and family have been members  
5 of my church, under my leadership for the  
6 past seven or eight years. And have always  
7 been very faithful and active attenders.

8 So I would ask you, as my experience  
9 with working with Calhoun County Juvenile  
10 system, that I mentor to young men on  
11 several occasions. Our church also serves,  
12 and has been for the last three or four  
13 years, serving as a site for community  
14 service.

15 So what I would ask you, Judge Jones,  
16 if you would give me an opportunity to try  
17 to make an impact of this young man's life.  
18 And I think that he has the tools and the  
19 makings of being productive, but I think  
20 that he does need the presence of another  
21 young black male, especially as a  
22 preacher/pastor. To give me that  
23 opportunity to make a difference in his  
24 life, sir.

25 THE COURT: All right. And you are?

1 THE WITNESS: My name is Deborah  
2 Thomas. I'm an active member of Narcotics  
3 Anonymous. Mr. Bester has been a member for  
4 about a year now. Up until the time he was  
5 incarcerated. He's a real respectable young  
6 man. He's real likeable, and real  
7 interested in Narcotics Anonymous.

8 And has played a part in many of our  
9 functions that we have had.

10 And he's a real outstanding young man.

11 THE COURT: Okay. And you are?

12 THE WITNESS: My name is Jena Chambers.  
13 And I've known Mr. Bester for about five and  
14 a half, six years.

15 During the time that I was going  
16 through some issue with my family, he's been  
17 there for me. Somebody I can talk to and  
18 somebody that I can count on. He's very  
19 family oriented.

20 Like I said, I had moved out of my  
21 mother's house, and he made sure that I had  
22 a way to and from work. And I told him  
23 numerous times that without him, I don't  
24 know where I would be. Because I wouldn't  
25 have made it if I couldn't go to work.

1 THE COURT: All right. Anybody else?  
2 Yes, ma'am, and you are?

3 THE WITNESS: I am Wakesha Coleman, I  
4 am Mr. Bester's fiance, and I'm also  
5 expecting a child, that he's about to bring  
6 into this world. I ask that -- He is great  
7 father. And he deserves to be -- Well, his  
8 kids deserve to have him in their lives.  
9 And especially with a child that's unborn to  
10 never know a father is a bad thing. And his  
11 child deserves to know his father.

12 And his daughters deserve to have their  
13 father in their life. He deserves to be  
14 here and be willing to take care of these  
15 kids that he's left us with.

16 And I just ask you to give us a chance  
17 to have a family.

18 THE COURT: Did you know he was using  
19 marijuana as recently as February of this  
20 year?

21 THE WITNESS: Did I know?

22 THE COURT: Yeah.

23 THE WITNESS: He's been clean.

24 THE COURT: Okay. Anything else?

25 MR. BENSON: Judge, a couple other

1 people came that want to say something. You  
2 need to swear them in?

3 (Whereupon, the following  
4 witnesses were duly sworn by the  
5 Court and testified as follows.)

6 THE COURT: What's your name?

7 THE WITNESS: Latasha Conwell.

8 THE COURT: Go ahead.

9 THE WITNESS: This is my brother, Your  
10 Honor. And I don't think that he deserves  
11 this. You know, we all do wrong. But he  
12 haven't killed anyone. And I think my  
13 brother deserves a second chance.

14 He's a good person.

15 THE COURT: You understand he has four  
16 prior felonies, two of them include shooting  
17 into a building[sic], an occupied  
18 building[sic]? Did you know that, that he  
19 had four prior felony convictions?

20 THE WITNESS: That was nine years ago.  
21 He was really young, you know?

22 THE COURT: Well, this happened last  
23 year, March 24th of '08. Just last year.

24 THE WITNESS: What happened last year?

25 THE COURT: This trafficking incident.

1           THE WITNESS: I know. We had to feed  
2           the family. You have to do, what you have  
3           to do sometimes.

4           THE COURT: So he was using the  
5           proceeds to feed the family?

6           THE WITNESS: No.

7           THE COURT: Well, what are you saying?

8           THE WITNESS: I just think that this  
9           case wasn't tried the right way.

10          THE COURT: Okay.

11          Anything else?

12          THE WITNESS: Yes.

13          THE COURT: What's your name?

14          THE WITNESS: My name is Lashana Gater.  
15          I am the mother of one of Durrell's  
16          children. I'm not here to excuse what he  
17          did. But I am here because I think he  
18          missed out on a big part of my daughter's  
19          life the first time. And they came back,  
20          they got this bond. And I don't want to  
21          tear a hole in her heart of him leaving,  
22          again.

23          He left the first time my child was  
24          one, when he came back, she was five.

25          THE COURT: Well, who do you think is